

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
) Chapter 11
PG&E CORPORATION AND PACIFIC)
GAS AND ELECTRIC COMPANY) San Francisco, California
) Wednesday, May 8, 2019
Debtors.) 10:30 AM
)
DISCOVERY DISPUTE AND
STATUS CONFERENCE

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

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1 SAN FRANCISCO, CALIFORNIA, WEDNESDAY, MAY 8, 2019, 10:31 AM

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3 (Call to order of the Court.)

4 THE CLERK: Matter of PG&E Corporation.

5 THE COURT: All right. Who's here today for our
6 discovery dispute? Appearances? Nobody? Okay. Well, nobody
7 can appear; I'm leaving.

8 I just want to get who's going to be speaking, that's
9 all. I see Mr. Julian, I assume he is.

10 MR. SLACK: Well, I don't know who's should speak
11 first, Your Honor. Let me just say what I think's on the
12 table, and --

13 THE COURT: Just restate your name. I know who you
14 are.

15 MR. SLACK: Your Honor, Richard Slack from Weil,
16 Gotshal for the debtors.

17 THE COURT: Okay, Mr. Slack. Good morning.

18 MR. SLACK: So good morning, Your Honor. I think
19 there are two related applications by the tort committee --

20 THE COURT: Right.

21 MR. SLACK: -- for 2004 discovery. The first is that
22 TCC's filed an application seeking agreements with third-party
23 contractors --

24 THE COURT: Right.

25 MR. SLACK: -- under 2004. And the second is

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1 informal. There was a letter --

2 THE COURT: A letter --

3 MR. SLACK: -- sent by --

4 THE COURT: -- the letter.

5 MR. SLACK: -- the TCC, and that has two pieces to it,
6 and I think it's important. There's one piece, which I think
7 they refer to as a management piece, and it's four requests
8 that I think are all related. It's 4, 5, 10 and 26.

9 And then there are two requests that are wildfire
10 related. And those actually are more in the same bucket as the
11 application itself.

12 So Your Honor, since it's the TCC's application, I was
13 going to let them go, unless you would like to hear from the
14 debtor first.

15 THE COURT: No. I don't -- it is probably the TCC
16 first. But let's restate it. I mean, we're down to six topics
17 on Mr. Julian's letter that I've identified and the broad 2004
18 exam. But I don't need to reinvent the wheel. Just tell me
19 what you want to do on the ones that are open, assuming I've
20 got them here.

21 MR. JULIAN: Yeah, Your Honor, it's really summarized
22 in Exhibit C to our letter to you.

23 THE COURT: Yeah. I got it. I mean, I've got the --

24 MR. JULIAN: And so --

25 THE COURT: -- the six topics that there's a

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disagreement about.

MR. JULIAN: -- 4, 5 and 10 really come down to board minutes and board packages for the three years before the bankruptcy and the period during the bankruptcy. And the committee wants to review board minutes as part of its normal oversight of management issues rather than having the issues come up every time a contested matter comes up and we have to come in and ask for a section of the board minutes that deals with that contested matter. The same --

THE COURT: But I mean, do you really think you have to have a board examination for every contested matter? We're not talking about --

MR. JULIAN: No, I mean issues come up.

THE COURT: Right.

MR. JULIAN: And the second reason is, we're looking at building pots in this case. Both discovery disputes come up from our desire to build pots of claims and insurance policies to satisfy fire claims that might be deposited into a resolution trust.

So the 2004 application deals with the debtor's third-party claims against the contractors, maintenance people, repair people, analysts who worked on the trees, the system, and the hardware and campfire --

THE COURT: Yeah, I know. I think I know generally the topical area. I guess the only question I have is what are

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1 you going to do with that information?

2 MR. JULIAN: Well, we're looking at issues dealing
3 with wildfire --

4 THE COURT: Well, of course.

5 MR. JULIAN: -- reports on the board, insider
6 transactions, dividends.

7 THE COURT: Well, let's stick with one topic. You'll
8 switch to the 2004. What are you going to do with all this
9 information about all the relationships, all the agreements
10 with third-party vendors and so on?

11 MR. JULIAN: Are you on the 2004, Your Honor?

12 THE COURT: Yeah.

13 MR. JULIAN: Okay. The debtors have agreed --

14 THE COURT: Yeah, I mean we've got to start somewhere.

15 MR. JULIAN: The debtors have agreed to produce
16 paragraphs 1 through 24, and so we're limited to 25.

17 Let me explain the three types of things we're looking
18 for, two of which they have agreed to produce.

19 First, at the 341 meeting, the debtor's representative
20 testified that they have not evaluated claims against the
21 third-party contractors who may be liable to PG&E for the fire
22 claims against PG&E. We estimate these claims and the
23 insurance policies that cover them could be about 700 million
24 to a billion dollars. So it's a large asset of the estate, and
25 depending on how the -- and Your Honor, these third-party

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1 contractors who worked on the trees and the hardware on the
2 power that failed and the electrical system that failed have
3 indemnity contracts in their contracts -- we know because we
4 looked at one -- whereby they agreed to indemnify PG&E for the
5 fire claims in this case.

6 THE COURT: Well, even if they haven't there would be
7 a common law --

8 MR. JULIAN: There would.

9 THE COURT: -- responsibility if the third party was
10 culpable. Right?

11 MR. JULIAN: There would.

12 THE COURT: Yeah.

13 MR. JULIAN: But the difference is in dealing with how
14 those assets come into the estate in a plan, the difference
15 between common law and contract and insurance policy.

16 THE COURT: Okay.

17 MR. JULIAN: Depending on how the --

18 THE COURT: No, I know. I understand what --

19 MR. JULIAN: Yeah. Well, depending on how the
20 indemnity contracts read, the money might have to be channeled
21 just to fire claims, depending on how they read. So we need to
22 look at those.

23 So we asked -- this is a large asset in the estate
24 that's not being pursued, and so we want to look at three
25 things, Your Honor, two of which they've agreed to give us.

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1 One is the contracts with the tree trimmers, the repairmen, the
2 maintenance people, the inspectors.

3 THE COURT: So if we can stick -- and I'm not trying
4 to interrupt you; I'm trying to stay with you. I'm looking at
5 paragraph 25. That's where we are, right?

6 MR. JULIAN: Well, in --

7 THE COURT: And so the tree trimmers and the
8 contractors, these are --

9 MR. JULIAN: Your Honor, may I explain the position?

10 THE COURT: -- what you're referring to? Yeah. Yeah.

11 MR. JULIAN: So they say they agree to produce those
12 types of contracts in 25, to the extent they agree to produce
13 them in 1 through 24. So I'm explaining to you what they've
14 agreed to do in 1 through 24.

15 THE COURT: Okay.

16 MR. JULIAN: So it's the contracts and the insurance
17 policies that cover them. We basically have agreement on that.
18 All right?

19 THE COURT: Um-hum.

20 MR. JULIAN: Turning to 25, because 25 focuses on the
21 tower that failed that caused the fire in camp fire, that in
22 turn caused this bankruptcy. We are looking at that more
23 closely for several reasons.

24 First, as I explained to you, we want the contracts to
25 show what the tree trimmers, the inspectors, the analysts, the

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1 risk assessment people agreed to do. That will identify who
2 are the third-party defendants that the debtor -- or we may
3 pursue on behalf of the debtor.

4 The second is the insurance policies that may name the
5 debtor as an additional insured. And I think there's agreement
6 that they will produce those things.

7 And then three, we're looking at the work product of
8 the inspectors, the risk assessment people, the repairmen, the
9 maintenance people, in order to identify the claim against
10 them.

11 So Your Honor, the contracts show the defendant, the
12 insurance policy shows the asset, the indemnity in the contract
13 shows the asset that come into the estate.

14 And then last, but not least, in order to identify the
15 type of claim that goes against them, we need to see the work
16 product, which is essentially in all those other subparagraphs
17 of paragraph 25.

18 Their argument is that deals with causation in the
19 fire claimants' lawsuits against PG&E, and they won't to start
20 discovery yet. And I get it; we're not starting discovery yet.
21 But that's not why we're seeking it. We're seeking it to
22 identify the name of the third-party defendant contracts,
23 insurance policy and indemnities that can cover --

24 THE COURT: Okay, but let's stop there for a minute.

25 MR. JULIAN: -- and the work product that shows the

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1 type of claim.

2 THE COURT: Let's say that XYZ was a contractor, and
3 XYZ did some work on this particular site, and XYZ is covered
4 by insurance from ABC insurance company. So you've got both of
5 those.

6 MR. JULIAN: We don't yet know the type of claim --

7 THE COURT: But what -- explain to -- you're living
8 with this; I am not.

9 What do you mean, what type of claim?

10 MR. JULIAN: So are --

11 THE COURT: Just explain a little more specifically
12 what you're trying to do.

13 MR. JULIAN: Well, we know who the defendants are, and
14 they have insurance.

15 THE COURT: Right.

16 MR. JULIAN: We don't know whether they did anything
17 wrong. We don't want to identify a claim when someone hasn't
18 done anything wrong.

19 There are four reasons why we want to look at their
20 work product and their analyses. The first is to identify the
21 type of claim, as to whether there is a claim.

22 THE COURT: So type of claim means negligence --

23 MR. JULIAN: Negligence, breach of contract, whether
24 there is --

25 THE COURT: -- something like that. Okay.

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1 MR. JULIAN: We want to see their analysis to see if
2 they've breached a duty so that there is a claim to pursue.

3 The second reason is, we need to identify whether PG&E
4 is subject to a 1.6 billion PUC fine for failure to follow the
5 advice in the analyst reports, just like the PUC fined PG&E for
6 in the San Bruno matter because if there's a billion dollar
7 plus fine, which is even referenced in the 10K (sic) they just
8 filed this month, on May 2, then that's a one billion dollar-
9 plus fine we're going to have to worry about in this case, and
10 we're trying to evaluate whether there's going to be a fine
11 arising out of camp fire.

12 THE COURT: Well, that seems to be much different from
13 the first category you were describing. I mean, I don't --

14 MR. JULIAN: Well, it's the second reason.

15 THE COURT: -- I'm not -- it's the second reason, but
16 it's a different conceptually --

17 MR. JULIAN: Yes.

18 THE COURT: -- much different thing because you could
19 have all the third-party -- parties could file bankruptcy, and
20 you still may have a right to pursue this 1.6 million (sic)
21 dollar -- or to defeat it. What your saying is it might be a
22 liability that you're --

23 MR. JULIAN: We're going to sit down and negotiate a
24 plan soon --

25 THE COURT: Right, right.

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1 MR. JULIAN: -- and we're trying to find out what pots
2 can we add to the resolution trust to pay fire claims and what
3 other liability is out there.

4 THE COURT: You're also ahead of me. I don't know
5 anything about a resolution trust. I mean, I know that this
6 concept, and I know there are concepts out there, but I --
7 you've got to slow down a little bit. No one's told me what
8 the plan is yet.

9 MR. JULIAN: There might not be a resolution trust.
10 But the point is --

11 THE COURT: Whatever the label is.

12 MR. JULIAN: -- whether or not there is or not, the
13 parties need to sit down at some point soon and start
14 discussing pots of assets and liabilities. I've told you about
15 the pot of asset we're trying to identify, and we're worried
16 about this liability.

17 There's two other reasons.

18 THE COURT: But again, you've got to let me go at my
19 pace because you know too much, and I know too little. Right?

20 MR. JULIAN: All right.

21 THE COURT: So you've identified our hypothetical
22 person who may be a cause or connection with an event that
23 caused the problem, and maybe that person is culpable, maybe
24 not. I understand the point.

25 I don't understand the nexus between that set of facts

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1 and this 1.6-billion-dollar exposure on a fine. That seems to
2 be much different. Again, wait and see what the other side
3 says.

4 MR. JULIAN: It is.

5 THE COURT: Maybe it's nonissue, but I don't know. I
6 can't connect the two.

7 MR. JULIAN: It is. So here's the connection.

8 THE COURT: Okay.

9 MR. JULIAN: Historically, when PG&E has in its
10 records documents that it indicate it knew of a safety
11 violation --

12 THE COURT: Um-hum.

13 MR. JULIAN: -- that is connected to a disaster, such
14 as San Bruno, the PUC fines --

15 THE COURT: No. I got it.

16 MR. JULIAN: In that case it was 1.6 billion.

17 THE COURT: But what is it that you want that the
18 discovery would uncover under that?

19 MR. JULIAN: I'm coming to that. If, as we believe,
20 the risk assessment reports show that PG&E knew of the problem
21 with the hardware on the tower in advance and didn't do
22 anything, there's likely going to be a large penalty in the
23 billions of dollars by the PUC, and the May 2, 10Q of PG&E even
24 predicts that this may occur.

25 Why do we think that the risk assessment is going to

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1 show that? Because two documents I produced in the STIP
2 hearing show that in 2014 there was a report issued on the
3 Caribou-Palermo line tower that failed that showed that a PG&E
4 inspector stated that the towers on that line had a high risk
5 of failure, and in 2016, an employee had a near hit fall on one
6 of the towers because of a hook that was corroded twenty
7 percent.

8 THE COURT: No. And this is the same tower that was
9 the subject of the attempt to interfere, I mean, hold the stuff
10 being sent off to Washington, right? The hearing that I had a
11 few weeks ago.

12 MR. JULIAN: Yes. Yes. Yes.

13 THE COURT: Okay. But again, Mr. Julian, you've got
14 to -- I'm pleading, I'm going to beg you to be patient with me.
15 You've described in the first part of your presentation an
16 inquiry that your committee would like to pursue to determine
17 if there's some recoveries. Now you've switched to a --

18 MR. JULIAN: A second reason.

19 THE COURT: -- discovery of is there is a big 800-
20 pound gorilla liability out there, and I don't understand the
21 connection. I understand the inquiry, but it seems to me a
22 different process.

23 MR. JULIAN: It is.

24 THE COURT: In other words, if the PUC says, we don't
25 have any fine, that's the end of that subject, right?

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1 MR. JULIAN: Correct.

2 THE COURT: I mean, there either will or won't be an
3 assertion of a 1.6-billion-dollar liability. If there isn't an
4 assertion, the problem's gone. It's a liability that isn't
5 going to dilute any recovery for creditors, right?

6 MR. JULIAN: Right. And so when the 10Q tells us
7 they're worried about this happening, we're trying to get some
8 information so we can evaluate it.

9 THE COURT: So what do you want that information for
10 now, in terms of your mission, other than to determine what the
11 total universe of claims is?

12 MR. JULIAN: It's the second reason. The first reason
13 is to determine whether a claim exists against the third-party
14 contractors. The second --

15 THE COURT: I thought I've already agreed with you. I
16 understand that.

17 MR. JULIAN: All right. So it's the second reason,
18 Your Honor. If you disagree with it, then I only have one
19 reason.

20 THE COURT: No. No. No. I guess I'm either dense,
21 or you're not making yourself clear.

22 You have described an attempt on your side to learn as
23 more as you can to find a source of increasing the pot. You've
24 now, on the second subject, described an inquiry to decrease
25 the claimants in the pot, and it seems to me they're two

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1 different inquiries.

2 MR. JULIAN: They are.

3 THE COURT: Okay. And why is it important now, today,
4 in this phase of the case, to start to figure out if you can
5 eliminate a liability?

6 MR. JULIAN: We're not seeking to eliminate it.

7 THE COURT: Well, I mean, no.

8 MR. JULIAN: We're seeking to determine with our FAs,
9 who are now meeting --

10 THE COURT: Um-hum.

11 MR. JULIAN: -- with the parties in the case and the
12 legislature, to gauge whether or not this penalty that the
13 debtor's warned us about in their 10Q of May 2 is a risk or
14 not.

15 THE COURT: Okay.

16 MR. JULIAN: They identify it as a risk. If we see
17 the same -- if we see in that document what we think we're
18 going to see, we are going to put a number in the liability
19 problem for that. Our FAs are going to do it --

20 THE COURT: Okay.

21 MR. JULIAN: -- even though the PUC's going to take a
22 year to get to it.

23 THE COURT: And what if you don't get that answer now,
24 what's going to happen? It's still going to be a question
25 mark. It's going to be an unknown.

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1 THE COURT: It's going to be less risk to us, as we
2 evaluate it.

3 THE COURT: Or an unassessed piece.

4 MR. JULIAN: Yes.

5 THE COURT: In other words, if we can go back and
6 visualize a simple list of assets on the one side and
7 liabilities on the other, there's a big question mark for
8 whether there's a big 1.6-billion-dollar bogey there.

9 MR. JULIAN: Correct.

10 THE COURT: Okay. All right.

11 MR. JULIAN: The third --

12 THE COURT: So third category.

13 MR. JULIAN: The third reason to look at the documents
14 that show why the hardware failed, and whether or not people
15 knew in advance, is to identify what caused the fourteen-
16 billion-dollar minimum damage camp fire in order to avoid
17 another catastrophic event that could imperil this bankruptcy.

18 So we're not focusing on all the fires. This one was
19 the biggest, and Your Honor, it's different. Remember, 2017
20 was largely fires caused by trees falling --

21 THE COURT: Um-hum.

22 MR. JULIAN: -- some hardware problems, some
23 deenergizing problems. But 2018 was unique in that it was
24 hardware related. Totally different. No trees were involved
25 that CAL FIRE has reported yet.

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1 And as you remember the STIP hearing, they're clearing
2 something like 1,400 miles of trees but only 150 miles of
3 hardware hardening. So to us, this is a very important thing
4 to look at in this case with our FAs to determine how to
5 prevent a catastrophic fire.

6 THE COURT: Okay. So again, be more specific in terms
7 of what it is you want me to order the company to do.

8 MR. JULIAN: The same thing in paragraph 25 that I've
9 asked for everything else. It's all the same thing, four
10 different reasons for giving it.

11 THE COURT: Okay.

12 MR. JULIAN: It's the risk assessment documents,
13 it's --

14 THE COURT: All right. I understand.

15 MR. JULIAN: -- scope of services, describe the work,
16 the work product, inspections, and inspection reports.

17 THE COURT: So and if there had never -- I mean, let
18 me rephrase that. Apart from wanting to know what will
19 increase the pot, and secondly, what will decrease the
20 exposure, the third one is what is being done to avoid another?

21 MR. JULIAN: Yes.

22 THE COURT: Okay. What's the fourth reason?

23 MR. JULIAN: The fourth is, all agencies, the SEC, the
24 DA, and the PUC -- everyone else is investigating the cause of
25 the fire, and we view the tort committee, which represents some

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1 50,000 victims, as similarly situated with the public, we want
2 to investigate what caused this bankruptcy.

3 The debtors admit in their papers that this bankruptcy
4 was caused by -- when the camp fire liabilities arose, not when
5 2017 arose. And this is the biggest thing that's happened in
6 the case. They've established a twelve billion dollar charge
7 on their books for camp fire alone, and we believe that such an
8 important cause of a bankruptcy should simply be investigated
9 just like everyone else is investigating.

10 In that regard, Your Honor, if we were representing
11 the unsecured creditors' committee, we would be looking at the
12 same stuff too: pots, fines --

13 THE COURT: But one of the concerns that I have is
14 whether the two committees are duplicating or overlapping, and
15 that's for another day. Today we're dealing with your request
16 for discovery.

17 MR. JULIAN: Yeah.

18 THE COURT: But it does -- and this comes up with all
19 the issue about employment of professionals and whether there's
20 a duplication of effort. I mean, to me, whether you're a tort
21 claimant or a contract claimant, you're a claimant. And if you
22 don't have a claim, you should be tossed out, and if you do
23 have a claim, you should be dealt with then. Therefore, the
24 issues should be similar.

25 So let's come back to the other discovery and stick

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1 with this one, and see what Mr. Slack wants to say. I mean,
2 all I'm trying to do today is see if there's a way to make this
3 move along.

4 So Mr. Slack, can you respond to those categories? I
5 guess it's not what the reasons that the TC has, but rather,
6 what it is they want. So what is it that you don't want to
7 give them? Is it the work product?

8 MR. SLACK: So Your Honor, Richard Slack for the
9 debtors. As I understand it, you'd like me to respond to that
10 particular issue.

11 THE COURT: Yeah, again, you all are loaded up with
12 the stuff. I'm trying to do it with some very minimal kind of
13 information. And consistent with my approach to discovery
14 disputes, I want to see if I can solve the problem with a quick
15 decision. So what did -- so yes --

16 MR. SLACK: So --

17 THE COURT: And we'll come back to the other letter in
18 a -- to the letter. But stick with the 2004 request.

19 MR. SLACK: Okay, very good, Your Honor. So let me
20 address the contractor requests. So the first thing -- and I
21 think Mr. Julian had this right -- there's been a large
22 agreement on ninety-five percent of the requests, and the
23 debtors have cooperated with respect to giving information on
24 the first twenty-four. And even with respect to the twenty-
25 fifth, has agreed to give the contractor agreements --

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1 THE COURT: Contractor.

2 MR. SLACK: -- and the insurance.

3 THE COURT: Right.

4 MR. SLACK: So we're only talking about --

5 THE COURT: Work product.

6 MR. SLACK: -- documents that go directly to the
7 liability issues, essentially the underlying claims. What I
8 think's important, Your Honor, is that Mr. Julian specifically
9 recognized that the basis -- certainly the primary basis for
10 liability of the contractors here is an indemnity. So think
11 about what that means. That means that the contractors aren't
12 liable unless the company is liable in the underlying lawsuits.

13 THE COURT: I'm not sure I follow that.

14 MR. SLACK: So in other words --

15 THE COURT: If I live next door --

16 MR. SLACK: -- the contractors --

17 THE COURT: Wait a minute. If I live next door and a
18 careless contractor caused a fire that burned my house down,
19 why wouldn't I have a direct claim against that person or the
20 utility that hired the guy in the first place? That's --

21 MR. SLACK: Well --

22 THE COURT: I mean, look, tomorrow I'm going to hear a
23 case about a personal injury of a person who fell, and she
24 claims to have tripped on a PG&E spot. She sued the
25 restaurant, the city, and PG&E. What's different?

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1 MR. SLACK: The point is that these contractors are
2 hired by PG&E --

3 THE COURT: Right.

4 MR. SLACK: -- and there's no question that in the
5 underlying litigations the argument is that PG&E is
6 responsibility for the conduct of the contractors. And the
7 contractors have indemnification. So if PG&E isn't found
8 responsible, liable, whatever you want to say, and there's no
9 damage that's responsible by PG&E, then the contractors --
10 because as Mr. Julian said, it's an indemnity. They're
11 indemnifying PG&E for PG&E's losses.

12 So the key here in understanding this is that
13 everything that Mr. Julian is asking for that we haven't given
14 them goes to the liability -- directly to the liability that's
15 being litigated in the underlying claims and is therefore
16 directed like a laser at the subject matter and the liability
17 issues in the underlying claims.

18 THE COURT: Well, but again, therefore what? I mean I
19 still don't understand why that means you can't produce it.

20 MR. SLACK: Okay.

21 THE COURT: Let's -- again, bear with me --

22 MR. SLACK: I'm --

23 THE COURT: -- I'll say the same thing I said to Mr.
24 Julian. I'm trying to -- I don't have the background that you
25 all have. So let's use an example of contractor XYZ who did

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1 something faulty on the tower that caused the fire and you've
2 got insurance to cover him and you've identified him. All Mr.
3 Julian wants to know is some causation stuff. What's wrong
4 with that? What's so burdensome about that inquiry?

5 MR. SLACK: So I think there's two things that are
6 potentially problematic for that. So let's start with the
7 first, and that is that there is, I think, a well-tested over a
8 long-time case law, that says that where you know you have a
9 claim -- where there is an underlying claim, you cannot take
10 discovery on that underlying claim under 2004. And in our
11 letter we cite, I think, five cases, but there's --

12 THE COURT: Yeah. All bankruptcy level. And no
13 controlling precedent.

14 MR. SLACK: Well, there's certainly a couple of
15 district court cases --

16 THE COURT: I said no controlling precedent.

17 MR. SLACK: But the point is, is that there's -- we
18 cite five, but there's probably between ten and fifteen of
19 these cases that say specifically that where you have knowledge
20 of the claim and there's an underlying claim -- and here, Your
21 Honor, the debtor's not saying no to this information. And
22 let's just be very clear about this. What the debtor is saying
23 is -- and everybody knows this -- that the underlying
24 liabilities are going to be decided in this bankruptcy at the
25 appropriate time, either at an estimation hearing, by adversary

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1 proceeding. So at some point --

2 THE COURT: Well, maybe not. They may be decided in
3 another form. How do you know how it's going to be -- where
4 it's going to be resolved?

5 MR. SLACK: Well --

6 THE COURT: I mean, I don't know.

7 MR. SLACK: You may be right, Your Honor, but my point
8 is still the same, which is that there is going to be a forum
9 that these are going to be decided.

10 THE COURT: Yeah.

11 MR. SLACK: And what the law says is you take
12 discovery when you know there's a claim like this in that
13 other -- either in that adversary proceeding in connection with
14 the estimation hearing where the parties can look at the
15 subject matter of those and be bounded by the Federal Rules of
16 Civil Procedure and have a give and take on the discovery,
17 which is what should happen here. And those cases --

18 THE COURT: But what's the disadvantage to using 2004?

19 MR. SLACK: I'm sorry?

20 THE COURT: What's the disadvantage to using Rule
21 2004?

22 MR. SLACK: So the disadvantage to using 2004 is that
23 2004 is a broad tool.

24 THE COURT: I know.

25 MR. SLACK: And it's not like a laser, it's

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1 encompassing.

2 THE COURT: But that's why we have conferences like
3 this to get -- to give them a laser, not a paintbrush.

4 MR. SLACK: Well, I would say this, Your Honor.

5 THE COURT: Or whatever. My metaphor will work.

6 MR. SLACK: When you're talking about liability for
7 the campfire, the idea that the debtors are going to have to
8 produce to the TCC broad-ranging information that -- you want
9 to make sure that you have the Federal Rules of Civil Procedure
10 that govern that because in 2004, it doesn't --

11 THE COURT: You have to be more specific what you mean
12 by that.

13 MR. SLACK: Well, so for example --

14 THE COURT: See, what I can't apply to this case and
15 won't is what we do in simple cases. When lawyers come in and
16 say the Rule 2004 is too broad, it requires an adversary
17 proceeding, I say to the other side, then file an adversary
18 proceeding. You don't want that. I mean, we don't -- I don't
19 want the TCC to have to start an adversary proceeding to do --
20 all we're trying to do is to get facts, get to the truth or
21 positions.

22 MR. SLACK: So we were saying --

23 THE COURT: So what is wrong? You keep telling me
24 about -- I know the rules about federal procedure and
25 discovery. But I also know why 2004 is there. So you have to

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1 tell me why this is unworkable or unfair to the utility.

2 MR. SLACK: Well, I think it --

3 THE COURT: Or inappropriate, I should say.

4 MR. SLACK: I think it's the burden of going through
5 discovery today that we know is going to be, and take place at
6 an appropriate time in the bankruptcy in some form.

7 THE COURT: But who's going to be the discoverer in
8 some other forum? Is it going to be this committee or is it
9 going to be somebody else? In other words, sticking with my
10 example, we got Joe. Joe was hired to go work on tower 22227,
11 and Joe screwed up and caused the tower to go up in flames.
12 And so the plaintiff, who lived next door and lost his house,
13 has sued Joe and PG&E. And PG&E has an insurance policy in
14 effect. Now, why can't the plaintiff discover the work product
15 that might be the kind of stuff that Mr. Julian would like to
16 look at?

17 MR. SLACK: I think it's a --

18 THE COURT: Joe says I'm not liable, but an
19 investigator says, well, maybe Joe is liable. But maybe
20 therefore there is a claim against the utility -- there
21 probably is anyway, but there is a claim for indemnity. What's
22 so different about the analysis?

23 MR. SLACK: Well, I -- if I understand your scenario,
24 Your Honor, we're talking about a timing issue about having
25 discovery taken by the TCC that, again, if there are parties to

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1 an adversary proceeding, if -- and we don't know whether it's
2 going to be an estimation, we don't know what Your Honor yet is
3 going to do in order to resolve the fire liability, right?
4 That's coming down the road.

5 THE COURT: Okay, but here's my invitation to tell me
6 what is going to happen if I don't let Mr. Julian do what he
7 does. In other words, you're asking me to tell him no, he'll
8 have to settle for the information that they've agreed to
9 produce. And so my response to you then, Mr. Slack, is well,
10 then, when and how is he going to get it if I don't let him get
11 it now? So give me some guidelines to know that there's an
12 alternative.

13 MR. SLACK: So let me give you two suggestions here,
14 Your Honor. The first is that I don't think any of us know
15 exactly how this is going to be resolved. I mean --

16 THE COURT: Add me to the list.

17 MR. SLACK: Okay.

18 THE COURT: Okay.

19 MR. SLACK: But what we do know is, is that in order
20 to get the bankruptcy to the finish line, we're going to have
21 to at some point have a mechanism for dealing with it.

22 THE COURT: Right.

23 MR. SLACK: And the parties in interest at that
24 time -- and again, I think it'd be premature to try to tell
25 Your Honor how that's going to be, whether it's an estimation

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1 or adversary proceeding -- at that time, the parties to the
2 bankruptcy are likely to have discovery with respect to the
3 underlying liability and claim issues that are at issue here.

4 THE COURT: But it's the same set of facts, right? In
5 other words, you're making an argument that why is Julian and
6 the TCC need to do this now if they're going to do it later.
7 But what's wrong with doing it now? Who's going to be doing it
8 later? In other words, this is an adversarial process at the
9 moment; it's unfortunately the case, right? So the TCC has
10 said we want to decide whether there's some culpability here.
11 We want to see if Joe was negligent or innocent.

12 MR. SLACK: Right.

13 THE COURT: All right? So I'm still figuring it out
14 in my mind if I say no to Mr. Julian and we do it at some point
15 in the future, who is going to be the person or the entity
16 seeking the information? Unless the company's going to bypass
17 all that with a plan that just pays everybody in full without
18 specifics, which I doubt is going to be the case.

19 MR. SLACK: Well, I'm sorry I wasn't clear because I
20 think the point is going to be you're going to look at whatever
21 the mechanism is. So let's say it's an estimation hearing.
22 You're going to look at the parties to the estimation hearing.
23 It may be a broad one or it may be a specific one with specific
24 claims. And the parties to that are going to get discovery.
25 And almost certainly in that situation, the TCC, the UCC are

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1 going to be entitled to get the same discovery that the debtors
2 get in that proceeding. And so at that time, everybody will be
3 able, whatever -- whether it's an adversary proceeding, an
4 estimation -- that's when the discovery, if any is appropriate,
5 is going to be put in place.

6 THE COURT: I guess here's my problem. Look, my first
7 involvement in the specifics of the fire that occurred on that
8 particular line was when we had this emergency hearing a few
9 weeks ago. I don't know if you were on the call, but various
10 people were, about the testing that Butte county was going to
11 do, I think, on the very same tote -- pole. And guess what I
12 was told? That if I didn't intercept it, it might be
13 destroyed, which means it might get burned up, it might be used
14 in the process.

15 There's a concept here of preserving evidence before
16 you lose evidence. So what's going to be different -- I mean,
17 what facts are going to be exactly as well-established or
18 establishable at some date in the future than if they're
19 established now, if I allow this discovery to go forward the
20 way he's requesting it?

21 MR. SLACK: I think --

22 THE COURT: It's the -- again, if Mr. Julian has
23 oversimplified, you can speak to it. But sticking with my
24 example, fact, Joe was hired; fact, there was insurance; fact,
25 the fire caused the pole to burn; fact, the burn -- the fire

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1 caused the plaintiff's house to burn down. So what's missing
2 is some expert who analyzes and says Joe was blameless, Joe was
3 at fault, PG&E was blameless, PG&E was at fault. Those are
4 just analyses and opinions, right? If they can be determined
5 now, why do they have to be determined later or what's the
6 disadvantage of determining it now and making it available for
7 the most likely candidate, namely the tort claimants'
8 committee?

9 MR. SLACK: So Your Honor, I'm going to have two
10 things to say here.

11 THE COURT: Okay.

12 MR. SLACK: First is that the underlying question --
13 which I think before this hearing I don't think anybody
14 expected was going to come out -- was should the tort
15 committee -- because it's not even in their application. The
16 tort committee said they wanted to look at contractor
17 information, and now what we're saying is the tort committee
18 should somehow be able to investigate causes of the fires as if
19 they're going to do an investigation that either the debtor --
20 they say themselves that there are outside agencies that are
21 doing this --

22 THE COURT: Well, they said the FAs. That -- I assume
23 that means that if they got their way, they'll be FTI, right?
24 Or no, that's the --

25 UNIDENTIFIED SPEAKER: Lincoln, Lincoln.

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1 THE COURT: Does -- Lincoln. I mean, again, this gets
2 back to a different question of why do we need three sets of
3 people investigating one thing? But that's for another day.

4 But Mr. Slack, are you saying that what Mr. Julian is
5 asking for in his comments today are broader than his written
6 requests?

7 MR. SLACK: Yes Your Honor. What I'm saying is when
8 you look at the request, it talks about contractors and
9 contractor liability.

10 THE COURT: Right. I have it in front of me.

11 MR. SLACK: When you're focused on contractor
12 liability, what we've given them are the contracts and the
13 insurance policies --

14 THE COURT: Okay.

15 MR. SLACK: -- or we've committed to do that.

16 THE COURT: Okay. Okay, so --

17 MR. SLACK: He's going to be able to see the type of
18 claim. He's going to be able to see what contractually those
19 types of claims are. Now he's said in here that what he wants
20 to do is investigate whether the contractors were negligent.
21 That's what he -- because it's all about the contractors.

22 THE COURT: No, I understand.

23 MR. SLACK: And so the point we were making, and I
24 think it's an important one, Your Honor, is that that limited
25 focus is totally unnecessary at this point in the proceeding.

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1 THE COURT: Okay. Do you have his Rule 24 -- 2004
2 request in front of you and this --

3 MR. SLACK: Yes.

4 THE COURT: -- and this paragraph 25?

5 MR. SLACK: Yes.

6 THE COURT: I mean, that's really what we're talking
7 about right? So it looks to me, if I look at 25-A and B and C,
8 seem to be factual, not analytical. D, I mean -- let's stick
9 with A, B, C, and D. I'm drawing a line there, but those first
10 four seem to just be pieces of agreements that would be in the
11 file in the old-fashioned way, right?

12 MR. SLACK: Right.

13 THE COURT: Agreements.

14 MR. SLACK: Yes.

15 THE COURT: Agreements, documents that describe scope
16 of services, documents that describe work performed. Now,
17 starting with E, it looks like there we're talking about
18 findings, summaries, analyses.

19 MR. SLACK: And again, it's focused on the third-party
20 contractors.

21 THE COURT: Yeah. I know this whole thing is. That's
22 the whole --

23 MR. SLACK: Right.

24 THE COURT: All of paragraph of 25 is a subset and --

25 MR. JULIAN: And not PG&E's conduct, Your Honor.

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1 We're only looking at the third-party contractors' conduct.

2 THE COURT: No. I understand. And if we skip over to
3 E -- I mean to F. F is insurance policies. Those are just
4 documents.

5 MR. SLACK: Right.

6 THE COURT: And then G -- well, G seems -- inspection
7 reports, and H. I mean, it looks to me like E, G, and H are
8 really what may be the difference of opinion here.

9 MR. SLACK: Yeah.

10 THE COURT: Is that a fair statement Mr. Julian?

11 MR. JULIAN: I think so.

12 THE COURT: I mean, the A, B, C, D, and F are just
13 documents sitting in a folder somewhere, right?

14 MR. JULIAN: Right.

15 THE COURT: Or names or Joe, Joe, the guy --

16 MR. JULIAN: And it's not to be used -- I'm not trying
17 to get it to use in a lawsuit against PG&E. I'm trying to use
18 it to see what the claim is against the third-party
19 contractors.

20 THE COURT: Okay.

21 MR. JULIAN: And those -- these requests did not ask
22 for what PG&E did --

23 THE COURT: No.

24 MR. JULIAN: -- right or wrong.

25 THE COURT: No. So Mr. Slack, again, what's the

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1 doomsday that you think can happen if this committee gets the
2 work product, to use that term, the work product of each of the
3 third-party contractors?

4 I mean, some -- whatever it is. I don't know exactly
5 what he has in mind or what a document might look like, but if
6 there's something in the file that says, Joe really screwed up
7 and he caused the fire and we're going down in flames -- bad
8 term -- that would be a finding or a summary. What's the harm
9 of letting him have it?

10 MR. SLACK: So Your Honor, I would say that there's no
11 reason that the debtor should be put through doing the --
12 through 2004 what inevitably is going to happen in a specific
13 context.

14 THE COURT: I know. You said that before. You've
15 said that about three times.

16 MR. SLACK: Okay.

17 THE COURT: If the debtor produces it today, what
18 difference does it make if they're going to have to produce it
19 tomorrow or next month or next year?

20 MR. SLACK: Well, they may or may not have to produce
21 the same information because what we're going to know when you
22 have a specific proceeding is what information is relevant to
23 that specific proceeding.

24 THE COURT: What kind of proceeding?

25 MR. SLACK: So you're going to do it once rather

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1 than -- because when we have the hearing, whether it's an
2 estimation hearing, an adversary proceeding, we're going to
3 have to conduct discovery at that time, and so it's going to be
4 bounded at that time by whatever the issues are in the
5 particular cases.

6 THE COURT: But nobody is --

7 MR. SLACK: And so you're going to be duplicating
8 through 2004, today, when there's no need to do it at this
9 point.

10 THE COURT: But 25-E doesn't ask the debtor to do any
11 discovery. It asks the debtor to produce what it has. So I
12 understand it's a burden. I mean, listen, I compliment you,
13 both sides, for making so much progress because all these
14 requests seem very, very burdensome or --

15 MR. SLACK: Yeah.

16 THE COURT: -- huge, huge. But what I'm missing here
17 is -- just again, I apologize for my simple hypothetical. But
18 if in a PG&E folder file somewhere there is some work product
19 or impressions or recommendations of somebody at the company
20 that says, I went and interviewed Joe and I looked at the fire
21 and here's my conclusions, that is a recollection or an
22 impression that's been recorded, and if it exists today, then
23 it's going to exist in the future, and I don't see how the fact
24 that there might be an adversary proceeding or might be a
25 claims process in the future, means therefore, the committee

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1 shouldn't get it now.

2 The committee just wants to analyze it. They're not
3 asking -- and I don't believe the committee would be entitled
4 to go file a suit against the contractor or to do anything.
5 They're just trying to analyze it as far as I can tell. You're
6 getting some helper heres -- helpers.

7 MR. JULIAN: Can I clear up one thing, Your Honor?

8 MR. SLACK: So --

9 THE COURT: Well --

10 MR. SLACK: Go ahead.

11 THE COURT: Yes, sir.

12 MR. NASAB: I just wanted to -- I'm Omid Nasab from
13 Cravath for debtors. I just wanted to add one clarifying
14 point. I think Mr. Julian said he's not interested in PG&E.
15 He's interested in the contractors. For G and H, which refer
16 to the inspections of Tower :27/222.

17 THE COURT: Right.

18 MR. NASAB: They were not -- inspections were not --
19 prior to the camp fire, inspections were not done by
20 contractors of those towers. Those were done by PG&E
21 personnel.

22 THE COURT: Well, this doesn't say, who did it. This
23 says, what you have in your possession.

24 MR. NASAB: I was just trying to clarify because I
25 thought that that was -- I thought that --

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1 THE COURT: If I were suing for you something and I
2 said, give me everything in your file that's not privileged, I
3 might find in there something that somebody else did, I might
4 find something that you did, and I'd be entitled to it. That's
5 what he wants. He's entitled to it. He's not asking you to
6 create things that don't exist or to give things that you don't
7 have. So I don't understand what the problem is.

8 Mr. Julian, you want to clarify on this point?

9 MR. JULIAN: I think they're -- when they talk to you
10 about me getting discovery before the lawsuit, they're talking
11 about a lawsuit where we're going to estimate the claims, the
12 fire claims in this case.

13 THE COURT: Right, right, the --

14 MR. JULIAN: I'm not --

15 THE COURT: The claims.

16 MR. JULIAN: I'm not trying it for that lawsuit. I'm
17 trying to identify an asset between where the third-party
18 contractors owe the debtor and the fire claimants money.

19 THE COURT: You're trying to assess that PG&E might
20 have a claim against Joe.

21 MR. JULIAN: Which is for us only, right?

22 THE COURT: Well, I don't know if it's for you only,
23 but --

24 MR. JULIAN: It may be.

25 THE COURT: -- it doesn't matter. If it's not -- if

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1 Joe files personal bankruptcy, there may be nothing there, but
2 at the moment, there may be a claim against Joe or Joe's
3 company that might be a big substantial company. I understand.

4 MR. JULIAN: Yeah. Okay.

5 THE COURT: But what do you -- but let's switch on
6 that subject. What are you going to do when you get it?

7 MR. JULIAN: We --

8 THE COURT: You're going to analyze. Somebody's going
9 to analyze, do we have a claim against Mr. -- is there a claim
10 against this third party.

11 MR. JULIAN: There are -- I mean, I got memos written
12 on this --

13 THE COURT: Hey, gentlemen, you can't be talking on
14 the record. Mr. Karotkin, you've got to -- if you want a
15 break, I'll let you talk, but you can't be talking on the
16 record --

17 MR. KAROTKIN: I'm sorry. I apologize, Your Honor.

18 THE COURT: -- while Mr. Julian is talking.

19 So Mr. Julian, if I authorize or direct the debtor to
20 provide the three categories here that are up for discussion,
21 other than absorb it and analyze it, you're not going to --
22 there's nothing you can do by acting on it. You can't bring a
23 third-party action, right?

24 MR. JULIAN: We are sitting down with our FAs and
25 politicians and talking about the pots and the liabilities in

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1 this case and we're adding them up. On this pot, if the
2 indemnity contract leads a certain way, it comes directly
3 through the estate to the fire claimants and it could be a
4 billion dollars.

5 Secondly, in order to determine how good a claim that
6 is, we're going to put a percentage dollar amount on it with
7 our FA --

8 THE COURT: Right.

9 MR. JULIAN: -- we need to see the work product,
10 itself, to see what happened. We're creating the claim. We're
11 not going against them like he talks about.

12 THE COURT: If I could turn it around, you're looking
13 to see whether a claim exists that's viable or practical
14 against a third party.

15 MR. JULIAN: Yes. And the point --

16 THE COURT: The point -- but at the moment, the claim
17 belongs to the company, right?

18 MR. JULIAN: Yeah.

19 THE COURT: Are you of the opinion that somehow either
20 your committee or individual victims have those -- own those
21 claims?

22 MR. JULIAN: Yes and no.

23 THE COURT: Well --

24 MR. JULIAN: So may --

25 THE COURT: I mean, you're --

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1 MR. JULIAN: May I --

2 THE COURT: -- asking the company to produce what --

3 MR. JULIAN: May --

4 THE COURT: Yeah. Explain -- or go ahead.

5 MR. JULIAN: Okay.

6 THE COURT: Do whatever you want to say.

7 MR. JULIAN: Yep. So --

8 THE COURT: Push the microphone away. You're a little
9 loud. I'm low. You're loud. Go ahead.

10 MR. JULIAN: We are identifying, as you know, a pot of
11 money. Second, if the debtors stick to what they testified at
12 the 341 meeting, that they have not evaluated it, and they are
13 not, then yes. Prior to plan confirmation or during plan
14 confirmation, the committee would file a motion for standing to
15 preserve these claims for the estate because we know they're
16 doing nothing in this case to preserve this.

17 THE COURT: Okay.

18 MR. JULIAN: It's a billion dollars that's being
19 frittered away.

20 THE COURT: Well, okay. But that's for the future. I
21 mean --

22 MR. JULIAN: Correct. And I can't evaluate the motion
23 unless I first get the discovery.

24 THE COURT: That, again, if you get -- if the
25 discovery that you're asking for equips you or your advisors

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1 with a theory that there is a claim against the third party,
2 you really can't do anything about that at this point.

3 MR. JULIAN: But it's relevant to --

4 THE COURT: To what?

5 MR. JULIAN: -- to negotiating the consensual plan.
6 You cannot do it unless you know -- you know, Your Honor, how
7 this works, Your Honor.

8 THE COURT: No. I understand. I --

9 MR. JULIAN: The FAs sit down, they talk about the
10 cash flow, the bonds. There's nothing being done on this by
11 these guys because they're focused only upon getting out of
12 their liability in this case and doing the traditional Chapter
13 11 stuff.

14 THE COURT: Well, I'm not going to --

15 MR. JULIAN: We --

16 THE COURT: -- respond to that. I'm going to decide
17 whether you get discovery. That's what I do.

18 MR. JULIAN: So we need it -- it's standard now. We
19 do it in every case. It's a pot of money that we have to
20 investigate that inures to our benefit because if an indemnity
21 contract says they pay us, it comes to us directly in a plan.

22 THE COURT: So what's the problem, Mr. Slack? You
23 still haven't persuaded me that there's a reason why I
24 shouldn't allow, at least, this exchange or this inquiry to the
25 information.

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1 MR. SLACK: So I have a suggestion, sort of a way
2 forward, Your Honor, which I think gives Mr. Julian what he's
3 asked for today at least with respect to the contractors, and
4 it would be twofold.

5 Number one, Your Honor, we didn't talk about it at the
6 argument, but in our letter to Your Honor, we made it clear
7 that we agreed to produce a production in the North Bay fire
8 litigation which concerns some of the exact same issues in
9 terms of wildfire safety that they're looking at. And so keep
10 that in mind. That's number one.

11 Number two, Your Honor, we would agree to give Mr.
12 Julian if there are reports about the third-party contractor
13 conduct, we would give them those because that would give them
14 the information about the contractors as opposed to what I
15 think is a different issue, a broader issue, about liability in
16 general. And so --

17 THE COURT: So you're in effect saying, 25, which by
18 definition is limited to third-party contractors, and then
19 you're saying you would agree then, I take it you're telling
20 me, to what E, F, and H ask for. I mean, I think those are the
21 only ones that are up. I mean, rather than put words in your
22 mouth, are you going to -- willing to comply with 25 without
23 debate?

24 MR. SLACK: Well, what I'm saying is, Your Honor, I
25 want to be very clear and so there's no ambiguity when we all

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1 go back, that what we're willing to provide, we think it would
2 be consistent with 25 here, but it will be limited to, if there
3 are reports or findings with respect to third-party
4 contractors, we would give them those, and they have the
5 information from the North Bay fire litigation. We would
6 suggest that they look at that information in the first
7 instance and the contractor reports, and like we've done here,
8 Your Honor, remember, ninety-five percent of this has been
9 resolved.

10 THE COURT: You've said that --

11 MR. SLACK: -- and the debtors are --

12 THE COURT: You must think I don't hear you the first
13 time. I know that.

14 MR. SLACK: And so --

15 THE COURT: We're only here for the five percent that
16 didn't get resolved.

17 MR. SLACK: Right. And so the point is it we would --

18 THE COURT: And the question is, is it now a hundred
19 percent resolved?

20 MR. SLACK: Right.

21 THE COURT: 2004 -- you've made your comment about
22 2004, and I don't -- and I'm granting or considering Mr.
23 Julian's 2004 request.

24 He's asked for paragraph 25. Are you now agreeing to
25 comply with 25? If so, move on. There's no debate. You're

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1 not being asked to provide work product or summaries of things
2 that are outside the scope of third-party contractors. Again,
3 if you've already agreed to 1 through 24, that's fine. I just
4 want to know what you're agreeing to.

5 MR. SLACK: So can you give me thirty seconds to
6 consult with counsel to make sure that I understand what the --
7 Cravath firm has been dealing with the wildfire issues and this
8 request, and I'd like to be able to take thirty seconds and
9 make sure --

10 THE COURT: Well, I'll take as long as you want. You
11 don't have to be governed by thirty seconds, but I thought I
12 read somewhere along the line that there was a hand off that
13 the law firm had the principal responsibility here. I don't
14 care who has it. It's just that it seems to be back and
15 forth --

16 MR. SLACK: So the hand off was that most of these
17 were the requests dealing with the 32, the 32 request. There
18 was a hand off of those.

19 THE COURT: Okay.

20 MR. SLACK: And with respect to the contractor
21 liability that's always been in -- sort of handled by --

22 THE COURT: Okay. That's fine. I'll take a break in
23 a minute.

24 What I'm telling you is that it has been the practice
25 as long as I've been on the court here to grant 2004 exams on

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1 an ex parte basis and then let people work it out. This one
2 obviously because of the scope of it and the size of it, I
3 intercepted the 2004 and said I'm not going to act on it
4 because we -- I have this other discovery dispute in the
5 pipeline, and so I'm treating this all as one.

6 To me, how it came about as a 2004 request or as a
7 more informal request is much ado about nothing, and we're here
8 now to decide what the party requesting the information is
9 going to get and what he isn't going to get. And if you'd like
10 to take a break and talk to your co-counsel, that's fine.

11 So let's do this, if there's agreement on your end by
12 counsel to comply with the balance of the 2004 request, then
13 we'll talk about the letter request after that and --

14 MR. SLACK: Yeah. My understanding is what I'm
15 suggesting, Your Honor, is that we all agree here sort of what
16 the request entails. In other words, that's what I want to
17 confirm, but what I'm suggesting is that the TCC may be reading
18 it broader than what I suggested, and if they are, what we're
19 willing to do is to -- and if they're not, that's great, but
20 we're willing to provide if there are specific findings with
21 respect to third-party contractors, we'd produce them, but
22 we're not going to, as I understand it, then produce all
23 liability documents that relate to the fires generally. It's
24 just going to be findings with respect to the third-party
25 contractors.

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1 THE COURT: Well, again, I'll let Mr. Julian speak for
2 himself. I'm responding by reading the request, which --

3 MR. SLACK: Yeah.

4 THE COURT: -- it seems to have a narrowness to it,
5 but I'll take a longer break, if after you talk to your
6 co-counsel, you talk to Mr. Julian.

7 MR. SLACK: Fine.

8 THE COURT: I mean, it may well be you just need to
9 discuss -- listen, I'll break until tomorrow if you can work
10 out all these differences including the remaining six. I'll do
11 whatever you want to do. I'm not here to punish you. I'm here
12 to encourage you to reach an agreement on the subject. So let
13 Ms. Brawder (phonetic) know when you want me back.

14 MR. SLACK: Okay. Thank you, Your Honor.

15 THE COURT: Okay. We'll go off the record.

16 (Recess from 11:22 a.m., until 11:42 a.m.)

17 THE COURT: Be seated. Okay, Mr. Slack? Oh, Mr.
18 Karotkin, you're coming back up?

19 MR. KAROTKIN: I'm not here for the main event, I just
20 have one --

21 THE COURT: Switching off, huh?

22 MR. KAROTKIN: -- one clarification.

23 THE COURT: Okay.

24 MR. KAROTKIN: Mr. Julian, who actually did not attend
25 the 341 meeting, made a comment that the company -- that Mr.

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1 Wells testified that the company had no intention of evaluating
2 whether it had claims against third parties. That was not his
3 testimony. In fact, he said that the company does indeed
4 intend to make that investigation. Just so the record's clear.

5 THE COURT: Okay. Thank you.

6 So are we okay on the 2004 order behind us now, or
7 not?

8 MR. NASAB: Your Honor, I think it is. Counsel for
9 the debtors discussed, and we discussed with Mr. Julian. And
10 based on those conversations we're going to agree to it. And
11 hopefully we don't have any disputes down the road about the
12 definitions, but I think we're -- we've talked about the scope
13 and we're going to agree to it and move on from here.

14 THE COURT: I'll go ahead and sign the 2004 order
15 then, unless it needs to be revised. Does it?

16 MR. JULIAN: No, Your Honor. Thank you.

17 THE COURT: All right. And again, for those of you
18 not familiar with the procedure here, if there's a subsequent
19 dispute about the 2004, telephone conference, maybe not ten-
20 page letters, maybe one-page letters telling me what the issue
21 is, all right?

22 So Mr. Slack, are you still in charge of the other
23 matter here?

24 MR. SLACK: Yes.

25 THE COURT: Or are we tag-teaming?

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1 MR. SLACK: But I think the same way we did the other
2 matter, it sounds to me like Mr. Julian should lead off. It's
3 his application.

4 THE COURT: Okay. So yeah, we have six open items?
5 Is that right?

6 MR. JULIAN: Yes, Your Honor.

7 THE COURT: Good. So we're using your letter, which
8 was helpful.

9 MR. JULIAN: Yes. Exhibit C, items 4, 5, 10 --

10 THE COURT: Um-hum.

11 MR. JULIAN: -- deal with board packages, board
12 minutes, board agenda, summaries of the minutes of the board's
13 meetings for three years before the bankruptcy, and through the
14 bankruptcy case itself.

15 This is our standard management review of issues. The
16 key issues in this case are wildfire safety, wildfire claims,
17 dividend payments that were made before the case, that Judge
18 Alsup --

19 THE COURT: Well, okay. Let's talk on that. What
20 difference does that make? I mean, we're not -- you're going
21 to want to go back and recover dividends, was the company
22 insolvent?

23 MR. JULIAN: No. Well, someone's asked me to do it,
24 but it's a tall order.

25 THE COURT: I know.

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1 MR. JULIAN: You know the issue.

2 THE COURT: Well, I know. But the question's why
3 bother? What's the point of making the discovery request? It
4 doesn't --

5 MR. JULIAN: We are looking at all management
6 decisions in a case where everyone, all agencies, have
7 criticized the management decisions. And we have to be
8 informed in order to participate in PUC hearings, the Judge
9 Alsup hearings, by looking at the board meetings.

10 THE COURT: Well, and I have to know, I have to
11 understand why that's so. In other words, Judge Alsup has made
12 his views known about paying dividends, but he might have
13 checked with me first. I don't think the company could pay
14 dividends while it's in Chapter 11 anyway.

15 But if it paid dividends in the past, that's the past.
16 And unless there's some attempt to recover them, I don't know
17 what's the point of going back there.

18 MR. JULIAN: Case in point, there's a fire victim
19 motion that's up. I would have to go now and ask for portions
20 of board minutes over the last three years and during the case
21 to talk about that. The STIP, compensation, I don't want to be
22 coming here every time there's a motion filed and ask for past
23 minutes and current minutes that deal with this topic. I think
24 it's a waste of time, energy to keep coming back to court every
25 time we have a dispute.

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1 Your Honor, it took from May 8th -- March 8th was my
2 first letter on this --

3 THE COURT: No, I understand.

4 MR. JULIAN: -- to today.

5 THE COURT: I understand, but --

6 MR. JULIAN: Two months. And so if you denied us,
7 then we will do the other. We will come back --

8 THE COURT: Mr. Julian --

9 MR. JULIAN: -- every time there's a motion.

10 THE COURT: -- Mr. Julian, you act like you don't know
11 me. I would think that if you are focused on a topic that's
12 related to a motion, if the debtors jerk you around and won't
13 cooperate, they're going to be dragged in here and told to do
14 some 'splaining (ph.), as they say.

15 So to say because you want dividend records three
16 years past is not the same as you want a relevant discovery on
17 a particular motion, a particular matter that is coming before
18 us. Like the things we have on the calendar tomorrow and next
19 month and next month.

20 But go ahead, finish your point. I mean, what I don't
21 understand is why, if the legislature and the PUC and anybody
22 else is already doing this, what is the tort committee going to
23 do with information about the dividend history of the company?

24 MR. JULIAN: And wildfire safety, and wildfire
25 management.

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1 THE COURT: Wildfire safety is a different subject.

2 MR. JULIAN: So well, those are two extra subjects. I
3 mean, we are looking at --

4 THE COURT: Okay, then it's --

5 MR. JULIAN: -- everything that concerns this.

6 THE COURT: But no. Your summary is a little broader
7 about that, about executive compensation.

8 MR. JULIAN: There was a --

9 THE COURT: Right?

10 MR. JULIAN: Yes.

11 THE COURT: Then again, I need to hear what Mr. Slack
12 or the others say about the problem, but isn't that -- when
13 I -- right? That that's one of the subjects that's still open
14 here?

15 MR. JULIAN: The subjects that we identified in our
16 letter were corporate governance review of management decisions
17 involving those matters that are under criticism by the PUC,
18 the federal court, and CAL FIRE, which are wildfire safety,
19 wildfire management, wildfire claims.

20 Another item that I identified was insider
21 transactions, to name one that has the committee rather
22 agitated is -- I know you've heard this before, but you've
23 asked me a question -- I'm going to give you an example, but
24 it's an example, not -- it's an illustration.

25 THE COURT: Okay.

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1 MR. JULIAN: Three weeks before the bankruptcy -- it
2 only involves two and a half million dollars, so you'll wonder
3 why I'm focusing on it. Three weeks before the bankruptcy --

4 THE COURT: We run that up in the course of the
5 hearing, right?

6 MR. JULIAN: Three weeks before the bankruptcy, there
7 were two types of contracts pending for payments: 2015 Butte
8 Fire settlement claim contracts that had already been signed,
9 and the payments were ready to be made --

10 THE COURT: Right.

11 MR. JULIAN: -- and the severance agreement with the
12 CEO, Geisha Williams, for 2.5 million dollars.

13 And the board met and preferred to pay their insider,
14 the CEO, 2.5 million, rather than the thirty million dollars to
15 the other contracts similarly situated.

16 THE COURT: Okay.

17 MR. JULIAN: I hear about this every meeting I get.

18 THE COURT: And I'm sure you do. I'm not making light
19 of it. I hear about it here. Maybe I hear about it elsewhere
20 too, but I'm not supposed to be considering that.

21 MR. JULIAN: So there are those types of things --

22 THE COURT: But therefore, what?

23 MR. JULIAN: -- in the board minutes.

24 THE COURT: In other words, again, we're not dealing
25 with a clearly insolvent company in Chapter 7. What would you

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1 do if you -- I mean, you know that Ms. Williams was paid some
2 money. Therefore, what? Therefore, what? There should be an
3 avoidance action, there should be a suit against her?

4 MR. JULIAN: Someone would certainly want me to look
5 at it, and we might not pursue it, but it's a legitimate
6 area --

7 THE COURT: But that's because the other side's paying
8 your fees, too. The question is, is it a proper inquiry at
9 this point?

10 MR. JULIAN: Yes, Your Honor. Because the parties
11 want the -- I actually have talked about this. We hear every
12 week on our weekly telephone calls about how this case must
13 move expeditiously and be resolved within six months. I know
14 it's a tall order. Nine months, whatever. And so they -- yes,
15 they do want us doing everything now so that we can sit down
16 and negotiate everything in the plan and disclosure statement.
17 Yes, the answer is yes. Because people out there are
18 suffering. And we have alternatives to resolve this quickly.
19 And so yes, we are looking at typical plan and disclosure
20 statement issues now. We're sitting down with the FAs and
21 doing all this work.

22 And so we are looking at -- in a case where management
23 is accused of failing to do something that caused the sixth
24 biggest bankruptcy case in our nation -- we are being asked to
25 look at management decisions as an investigation of all the

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1 board minutes. And if Your Honor says, Mr. Julian, I'm not
2 going to allow that type of wide-ranging investigation in it, I
3 understand. But I've made the request, and we will pursue it
4 another way if this way's not relevant.

5 THE COURT: Okay. So wildfire safety, insider
6 transactions --

7 MR. JULIAN: Wildfire claims, I mean --

8 THE COURT: Well, we're dealing with the wildfire
9 claims in a number of different ways. But let's go down them
10 one-by-one.

11 So the number 4 is the first on the list, right?
12 Board packages and board meeting agendas delivered for board
13 meetings. Okay, so the members of the board that existed in
14 the past, you're telling me at some point they were given
15 information ahead of time, like any board would get, a package
16 of stuff --

17 MR. JULIAN: Yes.

18 THE COURT: -- to prepare. And so that's number 4.
19 And then number 5 records what happened at the board meeting,
20 presumably. And number 10, I mean, they all seem to be prior,
21 early, I think, during and after board activity.

22 MR. JULIAN: Yes. And then -- yes, Your Honor.

23 THE COURT: Okay.

24 MR. JULIAN: So 4 and 5 deals with typical corporate
25 records that we believe in a fishbowl bankruptcy case the

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1 debtor should produce. Not burdensome.

2 THE COURT: Well, I don't know if they're burdensome
3 or not. I mean, they may not be. And --

4 MR. JULIAN: Number --

5 THE COURT: Okay. So let's -- it strikes me that 4,
6 5, and 10 are -- I mean, they're one topic that we're talking
7 about.

8 MR. JULIAN: Right, 10 is really the committees of the
9 board, Your Honor.

10 THE COURT: Yes, I understand.

11 MR. JULIAN: So the committee minutes, and committee
12 packages.

13 THE COURT: Yeah. For example -- for example, the
14 STIP. I mean, we heard that there were compensation committee
15 meetings that dealt with the STIP. Again, without questioning
16 or hearing the other side, I mean, that to me is the kind of
17 category we're talking about.

18 But now, let's go to 11.

19 MR. JULIAN: So 11 I've narrowed. So 11 and 12 are
20 basically reports. 11 is reports by a special litigation
21 committee, or committee of the board, and 12 is by outside
22 people: counsel, auditors and investigators. Obviously,
23 counsel --

24 THE COURT: But now, is there a subject matter? Any
25 report on any subject?

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1 MR. JULIAN: So their response was, Mr. Julian, that's
2 too broad. And I said, you know, you're right. So in the
3 second paragraph I narrowed it to dividends, wildfire claims,
4 insider transactions, and wildfire safety. They agreed to
5 produce those types of reports for 11 and 12, with respect to
6 dividends, wildfire claims, and insider transactions, but not
7 wildfire safety.

8 So on these two, 11 and 12, we have narrowed it down
9 to a single issue.

10 THE COURT: Wildfire safety.

11 MR. JULIAN: Reports dealing with wildfire safety.

12 THE COURT: Okay.

13 MR. JULIAN: So we're in agreement, I've narrowed it,
14 they've narrowed theirs, and we've come together and we're
15 simply disagreeing on reports dealing with wildfire safety.

16 THE COURT: Okay. Again, I -- oh yeah, you did say
17 that. I mean, I'm trying to absorb all this.

18 Oh, so they -- well, here's an interesting question.
19 If the debtor agreed to provide documents on the narrowed issue
20 of dividends, then why are we back to dividends as an open
21 issue on the first topics?

22 MR. JULIAN: Because they're different. Some are
23 minutes, some are reports --

24 THE COURT: Yeah, right.

25 MR. JULIAN: -- we'd be using them differently. But

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1 on 11 and 12 --

2 THE COURT: Okay. Okay, got it.

3 MR. JULIAN: -- we are willing -- we have narrowed our
4 request for investigation reports to dividends, wildfire
5 claims, insider transactions, and wildfire safety. The debtors
6 agree with respect -- unless -- except for wildfire safety. So
7 they're agreeing to produce reports as to the first three
8 categories, but not wildfire safety.

9 THE COURT: Yeah, no. I got it. And then finally the
10 last one is number 26, right?

11 MR. JULIAN: Number 26 was simply ratifications. So
12 typically ratifications appear in board minutes, so it's extra.
13 So if there's a ratification resolution, we want to see it.

14 THE COURT: So 26 really kind of is the tail end of
15 the first four?

16 MR. JULIAN: Yes.

17 THE COURT: So 11 and 12, well, let's talk about
18 wildfire safety. So what would you do with that information?
19 In other words, if there's a report that came from a third
20 party, this would -- I presume if there's privileged stuff, you
21 don't get that, right?

22 MR. JULIAN: Right.

23 THE COURT: But if there's non-privileged information
24 that went to the board, well you --

25 MR. JULIAN: No, that went to anybody.

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1 THE COURT: Oh, I'm sorry. Okay.

2 MR. JULIAN: So here's what we're doing with that,
3 Your Honor. We are --

4 THE COURT: Go ahead. No, I'm listening.

5 MR. JULIAN: We are meeting with the FAs and with the
6 political realm with respect to the items raised in the
7 governor's task force. We've recommended three types of
8 things, two of which are funds for the fire victims of this
9 case. And we're trying to help reorganize the company.

10 And one of the issues is to increase the capital
11 strength and the safety of the company so that they can raise
12 new bonds on the market. One of the primary elements of
13 raising bonds on the market is to increase the company's
14 wildfire safety. It's a big part of this case. Without
15 wildfire safety, this thing can't be reorganized. It's one of
16 the top three issues in the case.

17 And so the company's past reports on its ability to
18 implement wildfire safety are important in our reorganization
19 efforts today, which we are doing today. We are not -- again,
20 we are not waiting for the plan to be on file, we are doing
21 this today in negotiations with the stakeholders.

22 THE COURT: Okay.

23 MR. JULIAN: And it's relevant. It's the most
24 important thing in the case. It's the reason why the case was
25 filed.

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1 THE COURT: I understand.

2 MR. JULIAN: The last item, Your Honor, the chair
3 asked that I make one more request, if you look at number 17.

4 THE COURT: Oh, dispute on hold, yeah, okay.

5 MR. JULIAN: Yeah. The debtors have agreed to provide
6 us access to some state court litigation documents, Your Honor.

7 THE COURT: Um-hum.

8 MR. JULIAN: This has been pending since March 8th. I
9 think we're down to one issue, which is getting a protective
10 order, that we've asked for since March 8th. I think I know
11 what you're going to say, but we've been asking for this since
12 March 8th. We want a date certain by which we will get it. We
13 asked for next Monday, Mr. Slack asked --

14 THE COURT: Excuse me, I'm missing the point. You're
15 asking for the information, or asking for the protective order?

16 MR. JULIAN: Protective order. We simply need to
17 draft the protective order to get to the documents. We've been
18 delayed on this for sixty days.

19 Here's the point. Mr. Slack and I are only five days
20 apart. I know it sounds like it's very simple, but the chair
21 says that since this has been pending for sixty days, we want
22 the protective order drafted next Monday, Mr. Slack asked till
23 the end of the week. And I know what you're going to say about
24 that, but I was asked today to come forward --

25 THE COURT: I say Wednesday sounds like a good day to

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1 me.

2 MR. JULIAN: Yep.

3 THE COURT: No, but what am I missing? These are
4 complex issues, except for the drafting of a protective order?

5 MR. JULIAN: The protective order's not. Your Honor,
6 I have no more submissions. Do you have any more questions for
7 me?

8 THE COURT: No. Mr. Slack, are you going to do the
9 duty here? Do you agree the way Mr. Julian has --

10 MR. SLACK: I'm sorry, Your Honor?

11 THE COURT: -- narrowed the issue? Do you agree with
12 his narrowing of the issues?

13 MR. SLACK: Your Honor, yes. The issues are -- I
14 think, are very narrow on this. And I think you hit it on the
15 nose with a couple of points. With respect to 4, 5, 10, and
16 26, they're all related to board minutes, et cetera, et cetera.

17 And Your Honor, the dispute is really the question of
18 whether those requests should be sort of unbounded in order --
19 give me every board package, which are quite voluminous, that
20 go to the boards and committees, or whether they should be
21 bounded by subject so that the debtors can have the same
22 conversation that Your Honor did with Mr. Julian. Such as you
23 want the subject of dividends, why do you want that? If it
24 makes sense, we'll give it to you.

25 We had that conversation with Mr. Julian. So what we

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1 did in our meet and confer on these subjects -- 4, 5, 10, and
2 26 -- is we said, why do you need these? And Mr. Julian,
3 consistent with what he said here, gave us three subjects. He
4 said the payment to the former CEO, severance payments to other
5 senior officers, and the payment of dividends.

6 We had some discussion about that and then we went
7 back and we said, okay, if these are the subjects that you
8 want, whether -- put aside whether we agree or disagree we
9 said, you know, we'll produce to those subjects. And Mr.
10 Julian said, no, that's not good enough. I'm not going to give
11 you any more subjects, but we want everything.

12 And Your Honor, our view is, again, we want to be able
13 to have the same conversation with Mr. Julian about the
14 subjects that Your Honor did and that we did in the meet and
15 confer. And what I can confirm to the Court is that if Mr.
16 Julian has other topics that he didn't give us in the meet and
17 confer, we certainly are willing to discuss them with him and
18 potentially produce other information.

19 And I'd point out one other thing, Your Honor, which I
20 think is pretty telling. That's exactly what happened, you
21 know, with respect to requests 11 and 12. 11 and 12, putting
22 aside for a second that we're disputing one of the topics, we
23 said that's very broad. And Mr. Julian said, okay, well, here
24 are the topics that I want. I want those reports and
25 investigations. We actually went subject by subject and had a

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1 discussion about, well, we disagreed on one. That's the same
2 process that we think should take place with respect to 3, 4,
3 10 -- let me think about it -- 4, 5, 10, and 26.

4 And Your Honor, in our letter I think we explained why
5 that position is grounded in the law. It just doesn't make
6 common sense to do that, but it's grounded in the law of 2004,
7 which says that you should show good cause. And you can't just
8 get unbounded, you actually have to have a particular subject
9 or a topic in order to get the discovery. And it's their
10 burden to come forward with it.

11 So I won't belabor that point because I think common
12 sense says the same thing the law does here, which is that we
13 really should have topics. And that's, again, 4, 5, 10, and
14 32.

15 THE COURT: Well, I'm losing the gist here. Are you
16 saying the payments to the CEO and directors, other officer
17 compensation, you agreed to that, or don't agree?

18 MR. SLACK: Yes, we do. We've agreed to -- what we've
19 agreed to, Your Honor, very specifically is he identified, Mr.
20 Julian in our meet and confer --

21 THE COURT: Okay.

22 MR. SLACK: -- identified payments to the CEO, he
23 identified other severance payments to other senior officers,
24 and he identified dividends. And with respect to all three of
25 those, after we went back and discussed it internally, we said

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1 yes.

2 THE COURT: Just an aside, what's your relationship,
3 or the debtor's relationship, with the OCC for all this
4 information? Are you exchanging similar stuff with the OCC, or
5 are they not asking for it, or what's going on that's --

6 MR. JULIAN: You're saying the UCC?

7 THE COURT: Well, UCC, OCC --

8 MR. SLACK: Yeah, okay.

9 THE COURT: Same thing. Official or unsecured, call
10 them as you wish.

11 MR. SLACK: Right, so there hasn't been a similar
12 request made by the UCC. We certainly have cooperated with the
13 UCC.

14 You want to verify --

15 THE COURT: You want to be -- would you like to be a
16 UCC, or an OCC?

17 MR. LEBLANC: We usually would refer to ourselves as
18 the UCC.

19 THE COURT: Okay. Well, we call it the California
20 Commercial Code, not the Uniform Commercial Code. The UCC.

21 MR. LEBLANC: Andrew LeBlanc from Milbank, on behalf
22 of the Official Committee of Unsecured Creditors, Your Honor.

23 THE COURT: Right.

24 MR. LEBLANC: We've reached an agreement with Mr.
25 Julian and his colleagues that where there's a formal request

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1 made of a party, that we'll simply share that information as it
2 comes in. It's a simple process. We get it electronically,
3 we'll both share that. And that will go for the whole purpose
4 of this case.

5 But we're obviously trying to pick where we spend
6 resources here. And contrary to what Mr. Julian may have
7 suggested earlier, we are thinking about these issues. They
8 may have made these requests before we did, but we're trying to
9 get the same information. We're just trying to do it in a way
10 that's most efficient, which means we're not having a second
11 round of litigation here.

12 That doesn't mean we're actually going to look at all
13 the information when it comes in, it's just we'll have access
14 to it and we'll conduct the investigations that we think are
15 appropriate once we have that information.

16 THE COURT: Well, okay. All right. Thanks.

17 So Mr. Slack, let's go back to the wildfire safety.
18 That's the big issue --

19 MR. SLACK: Yeah.

20 THE COURT: -- for the open items that Mr. Julian
21 still feels strongly about. So what's the problem with that?

22 MR. SLACK: Right. So 11 and 12, Your Honor, I think
23 it's a question of when someone says a report or an
24 investigation on wildfire safety, I think it's the
25 understanding of what that means, what the scope -- what does

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1 it actually mean?

2 So what we were certainly willing to do, and what
3 we're willing to do today, is if there is a specific report
4 with respect to wildfire safety, you know, then we'd produce
5 that. But you know, there's obviously a lot of things that
6 touch on the issue of wildfire safety, that's not clear. And
7 so we wanted some -- we would want some clarity on what that
8 means.

9 So if there is a report that says this is a report on
10 wildfire safety, we would be prepared --

11 THE COURT: Okay. But how does the requester --

12 MR. SLACK: -- to agree to that.

13 THE COURT: -- know to ask for something if he doesn't
14 even know it exists?

15 MR. SLACK: I'm sorry, Your Honor?

16 THE COURT: I said how does the requester -- in this
17 case Mr. Julian, know to ask if there's a report on a
18 particular topic unless he knows there's one? Or the
19 alternative is to say any report on any subject.

20 In other words, I guess what I'm saying is if Mr.
21 Julian knew already because a little bird told him that there
22 is a folder called wildfire safety report dated such and such,
23 he'd know to ask for it. But if he doesn't know it exists, he
24 can't ask for it specifically. So how -- he could say give me
25 all your reports on any subject, and that would be too broad.

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1 So how do you solve the problem?

2 MR. SLACK: Well, I think the problem's solved by the
3 purpose of the report, right? In other words, it is --

4 THE COURT: Well, I would hope so.

5 MR. SLACK: I mean, it's a question of if you ask, for
6 example, all documents related to a bond offering, okay? On
7 the one hand there is going to be reports that go to the board
8 with respect to bond offerings.

9 THE COURT: Um-hum.

10 MR. SLACK: But you want to make sure that the parties
11 don't disagree, well, because you need financial statements
12 when you go out for a bond, I not only want the bond offering,
13 but I want every piece of financial data that's gone to them,
14 gone to the board.

15 So here what we're saying is if there's a report --
16 we're not trying to be cute or clever about it, if there is a
17 report that deals with wildfire safety, then we're prepared to
18 say we'll provide it if it's not privileged. But we want to
19 make sure that what we're talking about is that, and there's
20 not some broader aspect to what Mr. Julian is looking for.

21 THE COURT: I'm going to wait while they're -- they're
22 talking on the mic, again I don't --

23 Okay, well look. Let's try another test here. If
24 Judge Alsup at the next probation hearing says I'd like to see
25 everything the company has put together on wildfire safety, I

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1 suspect he'd get it. And I suspect if someone from Sacramento
2 calls and says the governor's office would like to see what's
3 the latest on wildfire safety from the company, he'd get it.
4 So why shouldn't the committee get the same treatment?

5 MR. SLACK: Well, so I think that when the requests
6 come in -- and I'm not the expert on this, so I'll defer to
7 some of the people who are. But I don't think you just get,
8 give me everything on wildfire safety. I think there are
9 very -- I think when you get to that level, they get our fire
10 mitigation plan; they get -- they're more laser-focused as to
11 exactly what they want.

12 So I don't think that you get, sort of, give me
13 everything with respect to wildfire safety.

14 THE COURT: Well, but, I mean, would you tell Judge
15 Alsup that he'll have to narrow his request?

16 MR. SLACK: No, but I'm suggesting that I think that
17 the requests that come in are not going to be, give me
18 everything with wildfire safety. I think that you'd have a
19 discussion, and I think whether it's the PUC or someone else, I
20 think it's not likely that the request is going to be, give me
21 everything related to wildfire safety.

22 THE COURT: I don't know. Mr. Karotkin --

23 MR. JULIAN: Can I clarify that?

24 MR. KAROTKIN: Can I --

25 THE COURT: Well, wait.

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1 MR. KAROTKIN: -- interject something?

2 THE COURT: He wants to clarify --

3 MR. KAROTKIN: I'm sorry.

4 THE COURT: -- something here.

5 MR. JULIAN: Yeah, sorry. Go ahead. Sorry.

6 THE COURT: Yes, sir.

7 MR. KAROTKIN: Stephen Karotkin, Weil, Gotshal &
8 Manges, for the debtors. As I understand, what Mr. Julian was
9 saying is that he's concerned that in the committee's
10 discussions with the legislative people up in Sacramento and
11 with the governor's office, which we're, frankly, not even
12 aware of, that they have a concern about prospective --
13 prospective wildfire safety plans of the company, for purposes
14 of making sure that the company can get the necessary financing
15 to come out of Chapter 11.

16 I think that's what he said, prospective, or what
17 they're doing now. Now, as he knows and as, I think, Your
18 Honor, you know, the company has filed a wildfire mitigation
19 plan with the CPUC --

20 THE COURT: Right.

21 MR. KAROTKIN: -- provided a copy to Judge Alsup as
22 well --

23 THE COURT: Right.

24 MR. KAROTKIN: -- and the CPUC is in the -- is in the
25 process of reviewing that. He can have a copy of it. That's

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1 the prospective issue that's --

2 THE COURT: I think he already has a copy. It came up
3 during the STIP hearing.

4 MR. KAROTKIN: It's public document.

5 THE COURT: Yeah, right.

6 MR. KAROTKIN: Okay.

7 THE COURT: Right.

8 MR. KAROTKIN: That's the prospective wildfire
9 mitigation plan of the company, that is relevant to what he
10 said he's concerned about, okay? And Judge Alsup has that.
11 And as we've -- and as I think I noted at the STIP hearing,
12 Your Honor, the CPUC will be, I'm told, issuing its report --

13 THE COURT: Yeah, no --

14 MR. KAROTKIN: -- on its evaluation --

15 THE COURT: -- you made -- that was very clear.

16 MR. KAROTKIN: -- next week, I believe. I think May
17 12th or 13th. And that's relevant to what he's talking about.
18 Going back two years or three years and asking questions about
19 wildfire mitigation and safety is not relevant to what he said
20 he was concerned about.

21 THE COURT: Well, I --

22 MR. KAROTKIN: And I think that --

23 THE COURT: I -- when --

24 MR. KAROTKIN: -- you talking about --

25 THE COURT: Mr. Karotkin, I may have overlooked that

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1 he's going back in time, but I -- when I looked at 11 and 12
2 here, I thought of it as prospective also.

3 MR. KAROTKIN: If he's looking for prospective, that
4 is the prospective plan. That is it.

5 THE COURT: Well, but look at 12. Says, all
6 investigation reports prepared by the company, et cetera, on
7 the subject. It's not -- it --

8 MR. KAROTKIN: Which, really, Your Honor, what he's
9 trying to get to, Your Honor, is, again -- he won't acknowledge
10 this -- is issues with respect to the potential liability of
11 the company for wildfire claims and what it did or allegedly
12 didn't do.

13 And, Your Honor, that is not the subject appropriate
14 for a 2004 examination. Those issues will be addressed in this
15 court at the appropriate time, whether or not -- and the extent
16 of the company's liability, and whether it was negligent or not
17 negligence, and that may or may not come up in this hearing,
18 because it would be our preference, Your Honor, to negotiate a
19 settlement of those issues so you don't have to address that.

20 THE COURT: Well, it would be my preference too,
21 but --

22 MR. KAROTKIN: Okay. But if and when --

23 THE COURT: -- but that's --

24 MR. KAROTKIN: -- it comes up --

25 THE COURT: -- that's why you exchange information, to

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1 try to negotiate.

2 MR. KAROTKIN: They don't need that information to
3 negotiate. Has nothing to do with it, okay?

4 THE COURT: Well, but see, when --

5 MR. KAROTKIN: And --

6 THE COURT: -- your other side tells you you don't
7 need something, that's an invitation to debate about.

8 MR. KAROTKIN: But he's talking about -- he said
9 himself, prospective. That's what --

10 THE COURT: Right.

11 MR. KAROTKIN: -- he said when he stood up here --

12 THE COURT: But he did.

13 MR. KAROTKIN: -- prospective.

14 THE COURT: But he did. But he also said to enhance
15 and facilitate the bond future, the future that we're --

16 MR. KAROTKIN: All prospective, Your Honor.

17 THE COURT: All prospective.

18 MR. KAROTKIN: All what is this company going to
19 implement, going forward, to mitigate wildfire risk. That's
20 what he said. That's the wildfire mitigation plan. It's not
21 what the company did two years ago, or a year ago, or three
22 years ago.

23 THE COURT: Well, let me interrupt. Let's clarify.

24 Are you willing to look forward only, or are you going
25 back in time to -- because that does seem to be, like, why go

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1 back, if that's going to change anything.

2 MR. JULIAN: May I explain?

3 THE COURT: Yes, sir.

4 MR. JULIAN: First, I'm going to address the two
5 questions you have just been asked by these gentlemen.

6 Mr. Slack suggested that I want all documents relating
7 to wildfire. I narrow these with terms of art used by white-
8 collar lawyers. All reports prepared by a special litigation
9 committee, or committee of the board, or any investigation or
10 audit team, number 12, all investigation reports prepared by
11 counsel, auditors, and investigators, obviously, to the extent
12 not privileged. Yes, we are looking for them for the past
13 three years because those inform the future.

14 Patrick Henry said, I know of no way of judging the
15 future except by the past. And in those past reports, they say
16 what they're going to do in the future. They are not merely
17 operating today on the basis of what they've said during the
18 last twenty-four hours or the last week. Those investigation
19 reports identify what happened and ameliorative action for the
20 future.

21 And we are entitled to see these reports, I believe,
22 in this case, Your Honor. It's that simple. We are not asking
23 for all documents. They are formal reports.

24 THE COURT: Well, it didn't -- at least, your grid
25 here doesn't say it's formal reports. It says, all reports,

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1 and it's --

2 MR. JULIAN: Reports by litigate -- special litigation
3 committees, Your Honor. Not going to be any --

4 THE COURT: Well, or --

5 MR. JULIAN: -- other type of report other than
6 reports by those committees and counsel --

7 THE COURT: No.

8 MR. JULIAN: -- other's investigators.

9 THE COURT: Well, Mr. Julian, it seems like a -- like
10 broader -- the words that are on the page seem broader than
11 what you're now saying. But let me ask you, other than quoting
12 Patrick Henry, what are you going to do with stuff in the past,
13 as distinguished from the mitigation plan or other matters that
14 are presented to the CPUC?

15 MR. JULIAN: Two main buckets there. The first is
16 we're going to look at what went wrong so that it isn't
17 repeated and there's not a ten-billion-dollar post-petition
18 claim in this case. We're not potted plants in this case. We
19 have lawyers who have been on this case for a long time, who
20 have ideas about how to make this company safe. We are
21 entitled, as a big stakeholder in this case, to make
22 recommendations as to how to make this company safe. And --

23 THE COURT: True. Okay.

24 MR. JULIAN: -- we want to see --

25 THE COURT: I agree.

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1 MR. JULIAN: We want to see what those reports say,
2 because we still believe, as the PUC does and Judge Alsup has
3 intimated, they're not being honest. In Judge Alsup's order,
4 imposing conditions was, because you've falsified records in
5 the past, I'm going to make you go back now and do everything
6 anew for me.

7 We have the same interest as Judge Alsup, and we
8 believe we have -- and respectfully, because he's a district
9 judge, but we have 50,000 people who are important stakeholders
10 in this case, who get to weigh in on wildfire safety. And what
11 they did in the past and recommended in the past for the future
12 is an important part of this case, Your Honor. I think it's
13 fundamental.

14 THE COURT: Okay. But again, if there's something
15 that they've done in the past that is replaced or superseded by
16 something that they've proposed going forward, for example --
17 now, you've educated me at the prior hearing about, you know,
18 the clearances, vertical and horizontal clearances, cutting
19 back the growth near the power lines. Pretty simple concept.

20 So what, if in the past, there was a report or there
21 was something that now has been superseded by a different
22 thinking of the subject -- wider, taller, clearer, whatever --
23 something, again, that you're more familiar with than I?
24 What's the point of going back in the past if they're
25 demonstrating what they've doing going forward?

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1 MR. JULIAN: We'll take it into account, just like you
2 review everything that's happened in the past and predicts for
3 the future. And secondly, we'll see what management did and
4 how management can be improved.

5 THE COURT: Well, I guess, to some extent, it sounds
6 like what you're really doing is taking your shots at
7 management as a function, rather than as a -- thinking about a
8 plan. But again, you have a right to do that. I'm not --

9 MR. JULIAN: Well, it --

10 THE COURT: -- saying you can't do that.

11 MR. JULIAN: Your Honor, they're concerned I'm going
12 to use this in estimation proceedings. This is my standard
13 management --

14 THE COURT: Well, standard -- you act like this is
15 what you do, these cases all the time. I mean --

16 MR. JULIAN: No, not mass tort. I'm just saying in
17 Chapter 11 cases.

18 THE COURT: Too close to the mic.

19 MR. JULIAN: Well, I'm just saying we didn't do it for
20 the litigation.

21 THE COURT: Too close to the microphone. You're
22 booming. Move the microphone away a little bit.

23 MR. JULIAN: We didn't do it for the litigation, Your
24 Honor.

25 THE COURT: Okay.

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1 MR. JULIAN: We did it for a management review and to
2 help us, as I mentioned.

3 THE COURT: Mr. Slack, were you going to say something
4 else? I mean, it --

5 UNIDENTIFIED SPEAKER: Do you want to say --

6 THE COURT: I'm inclined -- whoever, tell me. I'm
7 inclined to give them what they want. I don't think it's a big
8 deal, but I don't know what the harm --

9 MR. KAROTKIN: I find it a little astonishing that Mr.
10 Julian says that there are lawyers on his committee -- first of
11 all, there are no lawyers on his committee, anyway -- that are
12 experts in wildfire mitigation, and they're going to make
13 suggestions. I find that almost incredible.

14 THE COURT: Well, they know --

15 MR. KAROTKIN: Okay? And --

16 THE COURT: I --

17 MR. KAROTKIN: -- I think, again, Your Honor, let's
18 focus on what he said he was interested in. And I think you
19 acknowledged the same thing. We're talking about prospective,
20 moving forward. The CPUC, who knows a lot more about this than
21 Mr. Julian and his committee, is reviewing the wildfire
22 mitigation plan to see if it does enough or it should be
23 changed. And as you know, we committed to change the metrics
24 in the STIP to address that.

25 Judge Alsup -- he refers to what Judge Alsup has said.

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1 Judge Alsup said at the last hearing he was perfectly fine with
2 the company's wildfire mitigation plan, subject to whatever the
3 CPUC said. And that's what's happening moving forward, and
4 that's what we'll be evaluated, moving forward, in the context
5 of getting this company out of Chapter 11 and whatever is
6 necessary to attract the financing to get it out of Chapter 11.

7 This is a fishing expedition to -- for no purpose
8 other than to impose burden on the company. And there's no
9 reason to do it now. There's just no reason. As you know,
10 there are many, many, many things going on in this case, which
11 you see every day. And to impose this burden on the company,
12 for no purpose, doesn't make any sense. There are more
13 productive ways to move this case forward.

14 THE COURT: Well, I guess one of the things that I
15 have to better -- get a better sense on is how much of a burden
16 is it? If these are topics that have been addressed, relating
17 to the subject matter, how burdensome is it?

18 I understand -- I don't want a testimony from the
19 clerk, but I mean, is it really burdensome, or is it just your
20 way of fighting back to what you think they're doing is
21 burdensome? I don't know. I have no idea. I don't know how
22 to measure it.

23 MR. KAROTKIN: What is the relevance of it?

24 THE COURT: Well, I guess it's the subject matter. It
25 is the subject matter. And you can't deny, if there has been a

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1 history of falsifying records, there is something to be said
2 for seeing how honest the debtor is these days, if the --
3 somebody who has a stake in the --

4 MR. KAROTKIN: To what end?

5 THE COURT: -- action questions it.

6 MR. KAROTKIN: To what end, Your Honor? To what end?

7 THE COURT: Well, you know, maybe to seek to remove
8 management, if you want to take the ultimate thing.

9 MR. KAROTKIN: Okay. And if --

10 THE COURT: I mean, I don't know.

11 MR. KAROTKIN: -- Mr. Julian thinks it's appropriate
12 to move for the appointment of a trustee in this case, there
13 are appropriate procedures and appropriate --

14 THE COURT: Right.

15 MR. KAROTKIN: -- discovery for that. And that's
16 exactly what we're talking about here.

17 THE COURT: But isn't it easier just to give him the
18 information --

19 MR. KAROTKIN: No, it's --

20 THE COURT: -- than to fight?

21 MR. KAROTKIN: -- not easier to -- that's not the way
22 2004 is supposed to work --

23 THE COURT: Well --

24 MR. KAROTKIN: -- Your Honor.

25 THE COURT: -- we have different opinions about that.

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1 MR. KAROTKIN: Okay.

2 THE COURT: So tell me why it's really a burden,
3 rather than anything else. To me, it would be much more
4 burdensome to have to fend off a motion that --

5 MR. KAROTKIN: He's asking to go back --

6 THE COURT: -- hopefully, won't get filed.

7 MR. KAROTKIN: -- through three years of board
8 minutes --

9 THE COURT: Well, I mean, I think we're back to the --

10 MR. KAROTKIN: -- all of which have to be --

11 THE COURT: -- wildfire issue.

12 MR. KAROTKIN: -- reviewed for privilege. Whatever
13 these reports, all have to reviewed for privilege.

14 THE COURT: Right.

15 MR. KAROTKIN: Again, to what end? I don't
16 understand.

17 THE COURT: When --

18 MR. KAROTKIN: Because he does it -- because he's the
19 expert, and he does it in every other case?

20 THE COURT: Well, I don't think --

21 MR. KAROTKIN: That's not a justification for that.

22 THE COURT: I think he's going to share it with people
23 that are -- have more expertise. That's what we do. That's
24 what you do. That's what any bankruptcy specialist would do.
25 That doesn't concern me. It concerns this -- you say, to what

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1 end. That's the whole point of getting information. That's
2 what a 2004 --

3 MR. KAROTKIN: No.

4 THE COURT: -- exam is all about. Well --

5 MR. KAROTKIN: I think we have a disagreement --

6 THE COURT: We do.

7 MR. KAROTKIN: -- about that. I think --

8 THE COURT: We do.

9 MR. KAROTKIN: -- a 2004 examination is supposed to be
10 a targeted examination as to specific concerns he has or
11 potential claims that may come up.

12 THE COURT: But, Mr. Karotkin, I've heard it from his
13 mouth. The concern is this company has falsified records in
14 the past, and it has a history of ignoring wildfire safety, and
15 it takes responsibility, to some extent, to major fire years.
16 And sure, there have been changes at the PUC and changes in the
17 district court. But somebody with a stake in the action,
18 certainly, can see the information.

19 I'm inclined to let him look at the information. I
20 don't know how to narrow it to make it more efficient.

21 MR. KAROTKIN: To look at the information, again, Your
22 Honor -- I don't want to belabor -- to what end? What is he
23 going to do with that information?

24 THE COURT: There's an old saying about knowledge is
25 power. Have you ever heard that expression? And knowledge is

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1 knowledge, because every time you tell me, to what end, I'll
2 ask, what's the problem of concealing it -- I mean, of not
3 disclosing it? I accept that it's a burden if you have to
4 filter out privilege, and he hasn't tried to break the
5 privilege, nor is he going to.

6 But I mean -- so for every, what's the purpose you
7 give me, just tell me what's the problem. I just --

8 MR. KAROTKIN: As I said, the -- Your Honor, we're
9 trying to move this case forward --

10 THE COURT: I know.

11 MR. KAROTKIN: -- and administer this case, okay? As
12 you know, there are many, many things going on in this case.

13 THE COURT: There are. I --

14 MR. KAROTKIN: This is a distraction, and this is a
15 burden to assemble these documents for no legitimate purpose.
16 There is no legitimate purpose here. He stood up and told you
17 the reason he wanted this thing was prospective. He didn't
18 stand up and tell you he wanted this to investigate whether
19 management had engaged in wrongdoing.

20 THE COURT: Well, he talked about -- some of the
21 things that your colleague has agreed to was, certainly,
22 consistent --

23 MR. KAROTKIN: Again, but --

24 THE COURT: -- with that.

25 MR. KAROTKIN: -- focusing on this, in his words, he

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1 focused on prospective activity and prospective conduct. Those
2 are his words. When he didn't like what I said, then he went
3 back and said he wanted it for other reasons. But let's focus
4 on why he really wants it and what the relevance is.

5 He said, again, Your Honor, the relevance is, is this
6 company -- what is it going to look like coming out of Chapter
7 11? Will people be able to rely on the plan coming out of
8 Chapter 11? That's the wildfire mitigation plan. That's what
9 everybody is focused on. The CPUC is focused on it. Judge
10 Alsup is focused on it. And if that were his legitimate
11 interest, that ought to satisfy him, and that's what's relevant
12 here.

13 THE COURT: Okay, Mr. Julian. Tell me again why they
14 need to go back in time.

15 MR. JULIAN: Your Honor, I'll read from page 5 of my
16 letter to you, second paragraph under requests 5 to 10.

17 THE COURT: Okay, one second. Page 5?

18 MR. JULIAN: Yes.

19 THE COURT: Okay. I'm there.

20 MR. JULIAN: At three paragraphs under requests 5 to
21 10.

22 THE COURT: Yeah.

23 MR. JULIAN: First paragraph, "These requests relate
24 to the ordinary corporate governance review of management
25 decisions in a case involving repeated criticism of management

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1 decisions by the CPUC, the federal court, and CAL FIRE."

2 Second paragraph reads, "These documents are relevant
3 to explanation of management actions and the investigation of
4 management actions by the TCC, where management has a conflict
5 investigating itself, for use in the Chapter 11 case.

6 Documents are also relevant to debtors' weekly motions", et
7 cetera.

8 And I've supplemented that today by talking it -- by
9 clarifying that paragraph 1 refers to investigations by CAL
10 FIRE, with respect to, specifically, wildfire safety and
11 wildfire claims. It's not true that we are not looking
12 backwards. It's a fishbowl, and these are just -- they
13 could've produced them by now. They have them in binders, Your
14 Honor.

15 THE COURT: Well, we switched topics again. I thought
16 we're talking about requests 11 and 12, which is the wildfire
17 safety. So you --

18 MR. JULIAN: No, 5 through 10 are the board minutes
19 of --

20 THE COURT: Yeah, I know. I know. But we just got
21 into the discussion of 11 and 12 about wildfire safety. And
22 then you flipped me back to 5 through 10. So --

23 MR. JULIAN: I thought he was talking about board
24 minutes just now in this discussion, not the investigation
25 reports. I'm sorry.

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1 THE COURT: I heard him talking about wildfire safety,
2 and the CPUC plan --

3 MR. JULIAN: Oh, because we were just talking about --

4 THE COURT: -- and the mitigation plan.

5 MR. JULIAN: -- 11 and 12.

6 THE COURT: Yeah. Because you have put into 11
7 through 16 wrongful conduct of the debtor's officers' and
8 directors' ratification -- settlements and ratifications.
9 That's pretty broad, and that doesn't -- that's not narrow as
10 to wildfire safety. So I mean, I'll accept your representation
11 that you've agreed to narrow it down to this one issue. That's
12 what you said.

13 MR. JULIAN: Well, we've narrowed 11 and 12 down to
14 dividends, wildfire claims, insider transactions, and wildfire
15 safety. They have agreed to three of the four, not wildfire
16 safety.

17 THE COURT: I know. So let's narrow it down to the
18 following subject. If we divide the world into past and
19 future, you're hearing no resistance by Mr. Karotkin and the
20 others for information prospective. And you have the CPUC
21 report, and it seems to me you want more than that, because you
22 already got that. That's public, right?

23 So I'll repeat again, why do you need to get to
24 wildfire safety, historical versus prospective?

25 MR. JULIAN: When you say prospective, do you mean

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1 documents created from today forward, or do you mean --

2 THE COURT: Oh, no, I don't mean -- I mean what's
3 going to -- it's exactly what you were talking about. What is
4 going to assure your clients, and my constituents, and
5 everybody in Northern California --

6 MR. JULIAN: Oh, I see. Yes.

7 THE COURT: -- about the fire? Because it's mid-May
8 now, right?

9 MR. JULIAN: The cause of the bankruptcy.

10 THE COURT: You know what's going to happen in June,
11 and July, and August, when it gets dry?

12 MR. JULIAN: We think they have not yet come clean on
13 what they knew that caused these fires. We want to look at
14 those reports, so that we know, so that we can be a stakeholder
15 in this case and say, it shouldn't happen again in this case.
16 And so those reports of what happened are reports about the
17 most important thing that caused this bankruptcy. We think
18 we're entitled to see them.

19 THE COURT: Mr. Julian, the bankrupt -- the fires
20 happened, and the bankruptcy happened. So it's like going
21 back, well, why did the bankruptcy get filed? It got filed.
22 So the question is what to do about it. And you've been pretty
23 adamant about what your role, and I appreciate what you're
24 doing. You're doing it extensively, and very, very much
25 important that you do.

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1 But I don't understand why you need to see what was
2 done in the past. So I'm going to narrow the --

3 MR. JULIAN: Let me give an example.

4 THE COURT: Well, go ahead, because I'm going to --
5 I'm not inclined --

6 MR. JULIAN: So --

7 THE COURT: -- to go back now, after we --

8 MR. JULIAN: So --

9 THE COURT: -- think about it some more.

10 MR. JULIAN: -- if there's a report that says, we did
11 not -- we had forty-year-old hooks on the towers, and they were
12 obsolete, and we should've replaced those on year 25 --

13 THE COURT: Um-hum.

14 MR. JULIAN: -- and these two investigators knew about
15 it, we want to be able to say, one, you ought to be replacing
16 obsolete stuff before it breaks, before it's time, rather than
17 waiting; and two, those types of investigators that you had
18 reviewing it should not be doing it in the future.

19 This is the typical thing that we think has to be
20 fixed. So it caused this bankruptcy, the sixth-largest
21 bankruptcy case in the nation.

22 THE COURT: Yeah. Why do you keep saying that? You
23 think I don't --

24 MR. JULIAN: Well --

25 THE COURT: -- know this?

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1 MR. JULIAN: Well, because it's not -- Your Honor,
2 this is the key part of the case.

3 THE COURT: You keep saying that too.

4 MR. JULIAN: Okay.

5 THE COURT: I'm focusing on today's dispute.

6 MR. JULIAN: We need those documents -- we need those
7 reports to help make recommendations how to make this company
8 safe. They explain what happened. That's why we need them.

9 THE COURT: Okay. So there is a report that is
10 uncovered that shows that inspector so-and-so told us -- told
11 his management two years ago, we need to replace these towers.
12 And so now what are you going to do? Now, are you going to ask
13 and see, well, they replace the towers? I mean, doesn't the
14 current plan talk about what they're doing to deal with these
15 issues?

16 MR. JULIAN: It talks about some of it, but we don't
17 think it talks about all of it, because we don't have the
18 documents.

19 THE COURT: But again, it's very broad, the way you
20 want to do it. So --

21 MR. JULIAN: No, it --

22 THE COURT: -- you want me --

23 MR. JULIAN: Well, we tried to narrow it down to --

24 THE COURT: Yeah.

25 MR. JULIAN: -- very specific reports by -- you don't

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1 convene a special litigation committee or a special audit
2 committee to issue a report on wildfire safety unless something
3 specific happened.

4 THE COURT: I don't know that. I --

5 MR. JULIAN: And that --

6 THE COURT: I don't know if that's true or not.
7 I'll --

8 MR. JULIAN: So, Your Honor, I'll submit it. Those
9 are the things we think are important to do our job in this
10 case, with respect to what caused the bankruptcy. And we think
11 we need to look at them and evaluate them.

12 THE COURT: So how did you come to know, to even frame
13 the question for number 11? Again, I'm focusing on wildfire
14 safety, not on board minutes, and dividends, and so on. So I
15 mean, why isn't this -- I mean, do you know, for example, there
16 was a special litigation committee in existence?

17 MR. JULIAN: No.

18 THE COURT: Or, I mean, because it's very broad.

19 MR. JULIAN: No. So as I mentioned -- not trying to
20 brag here -- this is a standard request. When they said to me
21 it was too broad, I narrowed it to what I was really looking
22 for, that type of thing. So yes, they typically do have
23 special litigation committees or committees when an event
24 happens. And when a catastrophic event happens like Camp Fire,
25 they probably convened a committee to look at it.

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1 If there's no committee, then they have ought to
2 produce anything for that class of the documents.

3 THE COURT: Then why not have a temporal cutoff to the
4 events themselves, rather than the prior to that, for now?
5 What's wrong with that?

6 MR. JULIAN: I -- well, that --

7 THE COURT: In other words -- in other words --

8 MR. JULIAN: Yes, I would -- I would --

9 THE COURT: -- reports that relate to the 2017 and
10 2018 fires forward -- and forward?

11 MR. JULIAN: That'd be fine.

12 THE COURT: All right. I'll go along with that. And
13 that's specific, then, and it's specific enough that -- so to
14 me, that 11 and 12 are relevant to the 2017 and 2018 fires --

15 MR. JULIAN: Sure.

16 THE COURT: -- collectively. And that, obviously, is
17 subject to the privileges that we talked about.

18 Now, do we need -- is there still -- are we still
19 visiting the board stuff, or have we got that resolved, the
20 board minutes? I --

21 MR. JULIAN: So, Your Honor, I -- we want to look at
22 the board minutes, and there's an objection.

23 THE COURT: Yeah, but I thought -- again, I'm sorry.
24 I'm jumping around, because there are too many topics here. I
25 thought there was an agreement about dividends and payment to

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1 executives and insiders.

2 MR. JULIAN: So what happened was they asked me to
3 give them some examples.

4 THE COURT: And you did.

5 MR. JULIAN: They took it -- my --

6 THE COURT: Yeah, right.

7 MR. JULIAN: -- my discussion as being the only thing
8 I was looking at. That could've been my miscommunication. It
9 could've been a mishearing. Those, I identified -- I have
10 identified four types of things that I'm looking at:
11 dividends, wildfire claims, insider transactions, wildfire
12 safety.

13 They're not the only ones we're looking at. As I
14 mentioned, we want to know, in a case involving -- my speech,
15 you know what this case involves -- the things that happened.
16 We don't trust management. We want to look at what happened in
17 the board meetings. They've got them in binders. They can
18 produce the binders.

19 THE COURT: Mr. Karotkin, can you -- any reason why
20 they can't produce the binders?

21 Or, Mr. Slack, back to you? You guys are Huntley-
22 Brinkley here. Just tell me any reason why they can't produce
23 those binders.

24 MR. SLACK: It's nice that Mr. Julian somehow knows
25 that the company has binders that they just -- that's not the

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1 way it works, Your Honor. And what I'll tell you is is there's
2 a number of different boards, committees. What we would have
3 to do is look through every one of these. And as you can
4 imagine, the board minutes and packages, in particular, have a
5 huge privilege review.

6 And so this is going to be a very labor-intense
7 project, to have to go through three years, unbounded by any
8 topic. And so, Your Honor, the same way we dealt with 11 and
9 12 is, really, the way that both, I think, the law in 2004, as
10 well as just a practical aspect, is there -- it should be
11 bounded by topics.

12 THE COURT: So --

13 MR. SLACK: And --

14 THE COURT: -- you're going -- but you're okay with
15 those four topics' payments?

16 MR. SLACK: Well, we're okay with the three that we
17 agreed to, which was -- and we discussed. In other words, the
18 point was we had a meet and confer. And while --

19 THE COURT: Right, right.

20 MR. SLACK: -- Mr. Julian says now, they were
21 examples, what I can tell you is those were the three that he
22 gave us in the meet and confer. He didn't say they were
23 examples. They said, here's what -- here's why we want this.
24 And --

25 THE COURT: CEO, other officers, and dividends?

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1 MR. SLACK: That's right. And we said yes to that.
2 And what we're suggesting, Your Honor, is that there -- this
3 should be topic-based. And if Mr. Julian has other topics, he
4 should meet and confer with respect to those topics. And it
5 may be that we agree to give him those minutes and board
6 packages, with respect to those. But that's our position.

7 And again, it's the same way we dealt with 11 and 12.

8 THE COURT: Okay, one second. Let me review one thing
9 here on my own. Yeah, when I looked at the original 2004
10 motion and decided to wait, and because we had to deal with
11 these other matters, it struck me as that I suspect that the
12 company would find that some of the requests were extremely
13 broad.

14 I'm going to stick with Mr. Slack's suggestion and
15 tell Mr. Julian and the committee that you can have the
16 topics -- the three subject matters that have been discussed
17 right now: the CEO payment, the officer and director payments,
18 and dividends. Again, I don't know what you're going to do
19 with the dividend information. And we'll just keep open the
20 question on a specific topic-by-topic meet and confer.

21 If there's a particular topic and a particular
22 relevance that you believe, Mr. Julian, that you can insist on,
23 and the other side will not, I'll do my best to resolve it.

24 I'll narrow the 2004 -- this aspect of the issue, as
25 I've described, and as to the wildfire safety, the two topics

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1 of the years that we've talked about.

2 And then that -- I believe that leads us to the
3 protective order. So what do you want me to do? Decide when
4 the protective order can be exchanged? By Wednesday? Does
5 that work? I don't know why we're debating the date that a
6 protective order has to be drafted.

7 MR. SLACK: Your Honor, if you really think that --
8 what I told Mr. Julian was we would get it to him by next week.
9 He wanted a bounded date. I said, Friday, but we're going to
10 endeavor to get it to you earlier. I'm surprised that that's
11 not good enough, but we'll do whatever Your Honor says you want
12 us to do.

13 THE COURT: But what is it -- what is it that has to
14 be done? Is it just a question of a number of lawyers --

15 MR. SLACK: Yes.

16 THE COURT: -- or your client, or who's going to be --

17 MR. SLACK: Yeah, so, Your Honor, I mean, this is a
18 protective order, obviously, that will govern the case, as a
19 whole.

20 THE COURT: Right, right.

21 MR. SLACK: So we're taking some time to make sure we
22 get it right, thinking about all the different aspects. And as
23 you point out, there are a number of eyes that have to touch it
24 before we can get it out. So we said, give us until next
25 Friday, but we'll try to get it earlier.

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1 THE COURT: Okay, you know what? You can have until
2 Friday, but you also have to work with him on an agreed form of
3 order for today's matters as well. So it's got -- I want to --
4 I'm going to dump and scrap the proposed 2004 order.

5 And I'd like you, Mr. Slack, and Mr. Julian to work
6 together on an agreed -- we'll call it a 2004 order or call it
7 a 2004-plus informal letter discovery order, but I'd like an
8 order that clarifies and restates what we've talked about.

9 The written transcript is what it is, but a simple
10 order is a little more important and useful.

11 MR. SLACK: Okay, Your Honor.

12 THE COURT: Any reason why you can do that? You can
13 do that, can't you, by the same deadline? I mean, it seems --

14 MR. SLACK: Work on it -- work on it -- work on an
15 order with respect to the hearing, Your Honor?

16 THE COURT: Yeah. What I'm getting --

17 MR. SLACK: Yeah.

18 THE COURT: What I'm getting --

19 MR. SLACK: Yes.

20 THE COURT: -- at is that what started as my way of
21 handling easy discovery disputes has turned into two-hour
22 disputed conference, which is okay. I don't care. I'm not mad
23 at anybody. But out of it, we've talked about a number of
24 things. And both sides and their clients are entitled to some
25 certainty.

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1 So you, Mr. Slack, you, Mr. Julian, agree on a form of
2 order. If you can't agree on a form of order, we'll have
3 another hearing. But I'd rather that you agreed on the order.

4 And you'll have to live with the next Friday, Mr.
5 Julian, for --

6 MR. JULIAN: Got it.

7 THE COURT: -- the order you're looking for.

8 MR. SLACK: That's fine, Your Honor. Thank you.

9 THE COURT: Mr. Karotkin, as long as you're here --

10 MR. KAROTKIN: Thank you, Your Honor.

11 THE COURT: -- if you'll put -- you, and Ms. Kim, and
12 others in with you would set an agenda for tomorrow and a
13 sequence, because I know there's been some changes the last
14 little while.

15 MR. KAROTKIN: I'm sorry. I didn't hear your
16 question.

17 THE COURT: Well, that there've been some changes.
18 There've been --

19 MR. KAROTKIN: Yes.

20 THE COURT: -- a couple things --

21 MR. KAROTKIN: Yes, I think --

22 THE COURT: -- that have already been put over.

23 MR. KAROTKIN: I think the retentions of FTI and
24 Compass --

25 THE COURT: Right. But I haven't seen a -- an agenda

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1 for tomorrow the way I've seen in the past, unless it was done
2 this morning.

3 MR. KAROTKIN: I'm not sure the --

4 THE COURT: And so I just wanted to --

5 MR. KAROTKIN: It may have been done --

6 THE COURT: It's all right. I --

7 MR. KAROTKIN: -- while we were here.

8 THE COURT: -- don't care that it's not done. I just
9 want to see -- well, let's do this. Can I ask you to suggest,
10 by the end of the day, the sequence you want to take tomorrow?
11 You can use your own judgment on where the timing's going to
12 be.

13 I'm assuming the TURN motion's going to get a lot of
14 attention and publicity. But a couple of the other ones are
15 still hotly contested, and so I just like to make sure we use
16 the time efficiently.

17 MR. KAROTKIN: Sure.

18 THE COURT: I don't want to put a roomful of people
19 through awaiting discussing whether somebody's retention order
20 has to be tweaked because of some provision in it. So just do
21 it that way.

22 Mr. Benvenutti's standing. He must be --

23 MR. BENVENUTTI: Your Honor --

24 THE COURT: -- ready to do this too.

25 MR. BENVENUTTI: -- yes, I can't speak to the specific

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1 provisions, but I do know that Ms. Kim has been working very
2 diligently --

3 THE COURT: Yeah.

4 MR. BENVENUTTI: -- on completing it. It's gone
5 through various permutations because things have fallen --

6 THE COURT: It changes every five minutes.

7 MR. BENVENUTTI: -- fallen off the calendar.

8 THE COURT: Right.

9 MR. BENVENUTTI: But I would be very surprised if we
10 don't have it to you by midafternoon.

11 THE COURT: I'm not worried about it for me. I'm
12 worried about it for the public and everybody else, so when we
13 come in here tomorrow, we're all on the same page. In the
14 past, I've tried to defer to let your side pick the sequence.
15 And so all I'm doing is, let's do it the same way and be
16 mindful of which ones are going to take time, for sure, and
17 which ones are no-brainers, for sure.

18 MR. BENVENUTTI: I believe we're trying to do that,
19 Your Honor.

20 THE COURT: Yeah.

21 MR. BENVENUTTI: And I expect that everyone will have
22 that order at some point this afternoon, probably sooner rather
23 than later.

24 THE COURT: Okay. Thank you, all. See you
25 tomorrow --

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1 MR. BENVENUTTI: Thank you very much.

2 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

3 THE COURT: -- some of you. Bye.

4 (Whereupon these proceedings were concluded at 12:38 PM)

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C E R T I F I C A T I O N

I, Michele A. Clutts, certify that the foregoing transcript is
a true and accurate record of the proceedings.



/s/ MICHELE A. CLUTTS

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Phoenix, AZ 85020

Date: May 9, 2019

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